

Report To:	EXECUTIVE CABINET
Date:	26 August 2020
Executive Member/Reporting Officer:	Councillor Allison Gwynne, Executive Member (Neighbourhoods, Community Safety and Environment) Debbie Watson, Assistant Director of Population Health Tom Wilkinson, Assistant Director of Finance
Subject:	THE COUNCIL'S SPORT AND LEISURE FACILITIES – FINANCIAL SUSTAINABILITY DURING THE COVID-19 (CORONAVIRUS) PANDEMIC
Report Summary:	<p>Phase One of the Active Tameside post-lockdown reopening plans commenced on 27 July 2020. The report gives an update on the approach and the facilities that are opening.</p> <p>In order to provide Active Tameside further cash funding to buy time as the trading position, outstanding insurance claim, and development of any government support package, it is proposed that the Council advance the remaining £0.845m due for the remainder of the year for the services commissioned from Active Tameside from the Adult's and Children's Services Directorates.</p> <p>A further report outlining all options will be brought to the October Executive Cabinet to propose a definitive way forward for the Tameside Leisure offer.</p>
Recommendations:	<p>That Executive Cabinet be recommended too:</p> <ul style="list-style-type: none"> (i) Note Phase One of the Active Tameside post-lockdown reopening plan commenced on 27 July 2020. (ii) Approve a sum of £0.845m million payable to Active Tameside on 28 August 2020 as an advance payment for services commissioned by the Council covering the period 30 September 2020 to 31 March 2020 to allow the organisation to remain solvent and to ensure a variation of contract entered into to reflect this.
Links to Community Strategy:	Healthy Tameside
Policy Implications:	<p>Local authorities have a central role to play when it comes to the provision of community sport and recreation facilities and are responsible for the health outcomes for their populations – specified in the as specified in the Public Health Outcomes Framework.</p> <p>As part of the health reforms brought in by the Health and Social Care Act 2012, local authorities have a duty to take such steps as they consider appropriate for improving the health of the people in their area. The steps listed in legislation include:</p> <ul style="list-style-type: none"> • Providing information and advice • Providing services or facilities designed to promote healthy living • Providing services or facilities for the prevention,

diagnosis or treatment of illness

- Providing assistance to help individuals to minimise any risks to health arising from their accommodation or environment
- Making any other services or facilities available

Financial Implications:
(Authorised by the Section 151 Officer)

In order to reduce the financial impact of the temporary closure Active Tameside has taken up the offer of financial support from central government and furloughed all staff not required to maintain/sustain the company during the period of facility closure. In addition, Active Tameside has business resilience insurance and they are awaiting a ruling from the high Court as to whether the insurance covers the impact of a pandemic. Whilst it is uncertain as to whether this claim will be successful, this could be used to fund the remaining costs that have been incurred over and above direct government financial support. The Council continues to support Active Tameside's cash-flow position through this difficult period and paid the total value of the 2020/21 management fee of £1.077 million on 1 April 2020.

In addition the repayment of the 2019/20 prudential borrowing sum of £0.788 million has been deferred until 2021/22 at the earliest. It is envisaged that the outstanding historical prudential borrowing debt balance (which excludes new borrowing relating to the recently opened Active Denton) that is due for repayment to the Council by the end of the 2023/24 lease term (including the 2019/20 and 2020/21 sums) will be re-profiled. The outstanding level of prudential borrowing owed to the Council as at 31 March 2020 is £3.8m, and was due to be all repaid by the end of the contract concession in March 2024. The borrowing all relates to previous years capital investment in the facilities operated by Active Tameside. In reality the Council currently pays Active Tameside an annual management fee, of which over 70% is returned to the Council to repay the borrowing.

In addition to the support provided at the start of the pandemic, Executive Cabinet considered a report in June which requested that a further sum of £0.600 million be paid to Active Tameside on 1 July 2020 as an advance payment for social services commissioned by the Council up to 30 September 2020. The latest figures from Active Tameside suggest that this advance payment will support their cashflow until the middle of September 2020.

In order to provide Active Tameside further cash funding to buy time as the trading position, outstanding insurance claim, and development of any government support package, it is proposed that the Council advance the remaining £0.845m due for the remainder of the year for the services commissioned from Active Tameside from the Adult's and Children's Services Directorates.

Based on the latest cashflow forecasts this would enable Active Tameside to remain solvent until the end of October 2020. This also provides additional time for the Council with Active Tameside to develop a long term solution to the impact that has been caused by Covid 19. A further report outlining all options will be brought to the October Executive Cabinet to propose a definitive way forward for the Tameside Leisure offer.

A further update report will be presented to Members in October 2020 outlining all potential options.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

This report provides Cabinet with an update on the operational and financial position of Active Tameside as a result of the impact the pandemic on the leisure service.

In recognition of the impact of COVID 19 on businesses, especially in the service sector a number national initiatives have been implemented such as the furloughing of staff to ease financial pressures however this is now tapering which is increasing staffing costs.

In addition the Cabinet Office have issues an number of Procurement Policy Notes specifically addressing additional actions which Contracting Authorities, such as the Council, are encouraged to take in order to ease cash flow difficulties being experienced by suppliers as a direct result of the impact of the Covid 19 pandemic.

Active Tameside meets the criteria of an 'at risk supplier' for the purpose of the Procurement Policy Note. The Council is therefore expected to consider a range of measures, including advance payment for services to assist the supplier.

Such advance payments should be conditional upon the supplier agreeing to open book accounting arrangements to provide the Council with the assurances about the use of the funds and to ensure transparency.

The maximum advanced payment allowed without HMT permission is 25% of the total contract value and is currently permitted until 31 October 2020.

In addition The Temporary Covid Framework issued by The Cabinet Office permits financial assistance to businesses suffering financially as a direct result of the Covid pandemic up to a maximum of 800,000euros which can be used in conjunction with advanced payments for financial support to be provided without breaching State Aid provisions.

Further to the covid related assistance set out above the Council could also seek to provide financial support under the Market Economy Operator Principle which states that actions do not amount to State aid if any other operator in the market would act in the same way. Therefore the financial and risk analysis is critical to establish how other suppliers and commissioners of leisure services are reacting to the impact of the pandemic.

Therefore Members need to be content from the financial analysis in this report that the advanced payment represents value for money for the council and is a benefit to residents of Tameside and that it is a sound economic decision which would be made by other economic operators in the same circumstances.

Both the financial and operational situation regarding Active Tameside must be kept under review as it unlikely to be permissible for the Council to continue to provide short term financial support hence the further report in October to provide Members with more sustainable, longer term options

It is also advisable to formalise the advanced payment

arrangement through a variation to the contract to protect the Council's position. It should be acknowledged that the current facilities are unlikely to all be viable going forward and that Tameside Active will need to make significant changes in order to survive in the current market.

Risk Management:

Active Tameside have risk management and business continuity plans in place. Any additional risks identified as a result of the review will be noted and sets taken to mitigate these.

Access to Information:

For background papers relating to this report can be inspected by contacting Debbie Watson, Assistant Director of Population Health on 0161 342 3358, or at debbie.watson@tameside.gov.uk

1. BACKGROUND

- 1.1 This report is an update to the sport and leisure centre temporary closure report considered by the Executive Board on 8 April 2020, 20 May 2020 and Cabinet on 24 June 2020. In line with national guidance advising the UK public to avoid unnecessary social contact, all sport and leisure facilities owned by the Council and managed by Active Tameside closed at 10.30pm on Friday March 20 until the government announced facilities could re-open, ensuring all settings are COVID safe from 25 July.
- 1.2 This report provides details of a proposed advance payment for services commissioned by the Council from Active Tameside during 2020/21. The advance payment relates to services commissioned from 30 September 2020 to 31 March 2021. The sum would be payable on 30 August and would support the cashflow of Active Tameside until 31 October 2020, by which time it is expected there will be an update on the business interruption insurance issue and any additional government support.
- 1.3 A further report outlining all options will be brought to the October Executive Cabinet to propose a definitive way forward for the Tameside Leisure offer.

2. ONGOING REVIEW / ACTION

- 2.1 Regular weekly updates continue to be held between Active Tameside's management team and the Council in order to react to changing circumstances. These regular updates are used to plan for recovery together with supporting the timely and efficient reopening of the facilities and associated services.
- 2.2 Phase One of the Active Tameside post-lockdown reopening plan commenced on 27 July 2020. The plan was predicated on:
- Optimal Productivity and keeping costs to a minimum
 - Maximising the Commercial Offer
 - Utilising the Coronavirus Job Retention Scheme (Furlough)
 - Deficit Modelling/ scenario planning to March 31 2021 (modelling increased customer anxiety and reduced capacity)
 - Health and Social Considerations
 - Improved physical and mental wellbeing
 - Health needs and equitable access to facilities
 - Supporting community groups/ clubs/volunteers
- 2.3 Active Etherow, Active Longendale, Active Ken Ward and Active Oxford Park remain closed to the public with all other centres running a reduced programme and time table. Active Tameside have been prioritising their programme to retain members. At the time of writing, there were 9073 'live' Health and Fitness members and of these, 5679 memberships incorporated an 'aquatic element' eg gym and swim or gym swim and classes. During the course of lockdown, some 84% of members have been retained via the immediate suspension of direct debit payments and a comprehensive member engagement plan eg online classes. If however only of fifth chose to cancel their membership the monthly loss of revenue would equate to circa £50K or £300K in total assuming 6 months membership duration.
- 2.4 A number of scenarios have been modelled with Active Tameside with current plans illustrating the 'least worst' option in economic terms notwithstanding the benefits to the physical and mental health of those using the pools in particular – over 1600 customers had booked for lane swimming in advance of reopening on 27 July. The opportunity for swimming clubs to return to their existing 'slots' and the benefits for all concerned should also be acknowledged though this is much more difficult to quantify.

- 2.5 It is anticipated that via two further phases which are likely to be completed by the end of September this year, the majority of those products and services which have remained closed during phase one will have been reopened, depending on national guidance and the local transmission rates of COVID-19. Phase 2 plans will be finalised by 4 August with a view to possible implementation by 8 August 2020 based on value for money, income maximisation and adherence to public health advice and COVID safe measures. The plans will strive to balance commerciality/viability with the promotion of health and social outcomes for residents.
- 2.6 Additionally, there is increasing optimism within the sector that support may be forthcoming via the government similar to that made available to the culture sector (£1.57 billion). Andy Burnham as Mayor of GM is promoting the #SaveLeisure campaign alongside GM Active.
- 2.7 Throughout lockdown, Active Tameside has continued to provide commissioned services ranging from adult social care through special educational needs to youth outreach work targeting anti-social behaviour. The Social Return on Investment (SROI) for these services is considerable and for some of the individuals and families involved, incalculable. The SROI for mainstream health and fitness activity is also significant and this return is enhanced in a post lockdown environment with emerging evidence around decreasing levels of activity and increasing levels of social isolation. It is increasingly acknowledged that COVID resilience is intrinsically linked to good health and that excess weight (obesity) can increase the risk of serious illness from the virus.
- 2.8 During the course of lockdown, the Tameside Sport and Physical Activity Network (TSPAN) has continued to work with and support clubs in a number of areas including:
- COVID-19 risk assessments
 - National Governing Body Guidance
 - Sport England grant submissions
 - Volunteer training
- TSPAN is delivered by Active Tameside and this will continue to be the case during the course of the phased reopening given the huge and often unseen role that clubs play within the overall health and wellbeing landscape.

3. FINANCIAL IMPACT

- 3.1 From the outset of lockdown, approximately 84% of Active Tameside employees were furloughed, resulting in a repayment of just over £1M from April – July, with the remainder of staff involved in the ongoing delivery of commissioned services for vulnerable people and the children of key workers.
- 3.2 During the course of phase one reopening, 30% of employees will remain furloughed pending the formulation of plans for subsequent phases as COVID secure guidance and protocols evolve. Active Tameside has been unable to secure a Government Business Interruption Loan on account of its balance sheet pension deficit. However, all opportunities for deficit mitigation have been explored including; Council Tax Rebate, Government Rate Support and in due course Job Retention Scheme ‘bonus’ which has the potential to take the total repayment to £1.6M.
- 3.3 Executive Cabinet have already supported Active Tameside’s cash-flow position through this difficult period through a number of measures:
- 31 March 2020 - repayment of prudential borrowing of £.788m was deferred to at least 2021/22
 - 1 April 2020 - paid the total value of the 2020/21 management fee of £1.077 million.)
 - 1 July 2020 – agreed an advanced payment for Adult’s and Children’s commissioned services of £0.6m.

- 3.4 These payments will support the cashflow of Active Tameside until the middle of September and in the absence of further funding whether through a successful insurance claim, specific government support for Leisure Trusts generally, or from Tameside Council, Active Tameside will be unable to continue trading beyond this.
- 3.5 It is important to note, that should Active Tameside become insolvent the facilities would return to Council control and along with them any on going liabilities associated with their operation.
- 3.6 With Active Tameside starting to reopen some of its facilities following government guidance and the withdrawal of furlough support means that the cashflow dynamic changes again. Reopening under social distancing guidelines reduces the capacity of the facilities and therefore their profitability. Direct debit income is the mainstay of leisure providers and the combination of lockdown and restricted reopening is likely to have an impact on this important income source, although the full extent of this will become clearer as facilities reopen and start to operate under the new regime.
- 3.7 In order to provide Active Tameside further cash funding to buy time as the trading position, outstanding insurance claim, and development of any government support package, it is proposed that the Council advance the remaining £0.845m due for the remainder of the year for the services commissioned from Active Tameside from the Adult's and Children's Services Directorates.
- 3.8 Based on the latest cashflow forecasts this would enable Active Tameside to remain solvent until the end of October 2020. This also provides additional time for the Council with Active Tameside to develop a long term solution to the impact that has been caused by Covid 19. A further report outlining all options will be brought to the October Executive Cabinet to propose a definitive way forward for the Tameside Leisure offer.
- 3.7 Members are reminded that Active Tameside are in regular dialogue with Council finance officers during this period and are operating on a transparent and open book policy in respect of their financial position.

Business Loans

- 3.8 In order to qualify for any of the Government backed business loans, a business had to be solvent and be able to repay any loan. As Active Tameside has a pension deficit, they are (and have always been) technically insolvent. Their balance sheet has a £ 1.4 m deficit (at 31 March 2019 – latest audited accounts). Even if they were solvent, they would be unable to repay any meaningful loan due to affordability compounded by the contract expiring with the Council on 31 March 2024. The pension deficit/balance sheet insolvency is a common position for those leisure trusts that maintained a Local Government Pension Scheme. Having discussed with their bank, they are unable to borrow anything under the Government loans scheme as they do not meet the criteria.

Business Viability - Going Concern

- 3.9 In order to trade legally, any business has to have a reasonable expectation that over a 12 month period its income will exceed its liabilities. If not and it keeps trading, that is classed as "wrongful trading" and trustees become personally liable for company debts. Currently the Government has temporarily suspended that piece of legislation due to Covid but at some point it will need to be addressed. As part of the normal audit process the Trustees/Directors of a Company have to make a legally binding statement that they believe they will be a going concern for a minimum of 12 months from the date at which the accounts are signed.
- 3.10 Active Tameside's financial year end was 31 March 2020 and the Audit is due to take place this summer with the final accounts presented to Board members in December 2020. At that point the Trustees would look to assure their auditors that over the next 12 months they

would have sufficient funds to meet liabilities. This is onerous enough in normal circumstances and is very unlikely that any responsible Governing body (based on what we know) would be able to provide that assurance to December 2021. In the past, the Council has provided a “letter of comfort” to Active Tameside to support this requirement. It is only fair to point out that whereas in the past it was unlikely that this letter would have been activated, under the current circumstances it is highly likely that Active Tameside will need additional financial support to keep trading until “normal” revenues can be re-established.

Solvency

- 3.11 All Companies have a legal duty to cease trading (become insolvent) when they become aware that they can no longer pay their bills and have no prospect of recovering. Under Covid 19, the Government temporarily relaxed that duty. This expired on 1 June and we await an update on the Government’s position. Clearly without either continued Council financial support or Insurance, Active Tameside would cease to trade and become insolvent.

Insurance Update

- 3.12 Active Tameside has submit a claim for business interruption under a special “resilience clause” via their business insurance policy.
- 3.13 At the time of writing, the High Court Test case brought by the Financial Conduct Authority to seek legal clarity with regard to *Business Resilience* clauses such as those incorporated within Active Tameside’s insurance policy with Royal Sun Alliance is being determined - <https://www.fca.org.uk/news/press-releases/fca-seeks-legal-clarity-business-interruption-insurance>.

4. CONCLUSION

- 4.1 It is clear that an empirical review of the relationship between the Council and Active Tameside is necessary in order to ensure that the health and social outcomes prescribed by the Council are not only deliverable but sustainable in revenue terms and realistic in terms of capital investment.
- 4.2 A visioning session has taken place together with a review of profits and losses of each facility, identifying future sustainability, and any opportunities and proposals for redesign. Any future investment will need to align to the Council’s medium term financial plan and Strategic Asset Management Plan as part of the COVID recovery approach.
- 4.3 Going forward there will be significant costs of re-opening services and the Trust is predicting a major loss of income as it implements social distancing and reduces capacities. This immediate shock comes alongside the budget pressures of the Council. Given this combination of financial pressures Tameside Active will need to consider all options, including the possible permanent closure of some facilities. Future options for the financially sustainable delivery of the Council’s sport and leisure offer will be presented in a further report to Cabinet in October.

5. RECOMMENDATIONS

- 5.1 As stated on the report cover.