Agenda Item No:	**5**	
Committee:	**Cabinet**	
Date:	**14 November 2022**	
Report Title:	**Freedom Leisure - energy crisis impact and cost mitigation measures and support**	

1 Summary

1.1 Freedom Leisure has asked the Council to consider providing financial support and/or changes in service provision to fund the increase in energy costs to run the four leisure facilities. This report asks Cabinet to consider possible approaches to mitigating the excessive energy costs currently being placed on Freedom Leisure and to consider options to support Freedom with such costs.

2 Key Issues

2.1 Leisure centres play a critical role in supporting health and wellbeing, tackling health inequalities and levelling up communities. Fenland's leisure centres offer the community the opportunity to maintain or improve their activity levels, improving their health and reducing their risk of ill health. The leisure centres also offer children the opportunity to learn the important life skill of swimming.

2.2 In December 2018 Freedom Leisure, a charitable trust, took over the operation and management of the Council's four leisure centres with a 15 year agreement.

2.3 This arrangement has saved FDC £351,000 p.a. Additionally, a staff review of contract management staff as a result of the new Freedom contract added an additional £49,000 p.a to the annual savings, equating to £5.6 million of savings over the life of the contract.

2.4 The Council supported Freedom through the impact of Covid 19 as a part of our contractual obligations which is set out for context within the report.

2.5 The energy crisis that the country is currently experiencing has added exceptional unavoidable costs into the Leisure contract with Freedom. It was anticipated that the Government's support to businesses on increased energy costs would keep costs down, however that has not been sufficient. Whilst Government has set up a scheme, the Energy Bill Relief Scheme (EBRS) to support businesses, the impact of the scheme is limited, especially for high energy services such as leisure centres, particularly those with swimming pools.

2.6 In the final 6 months of 2022/23 Freedom estimates excess energy costs of £281,254. The predicted excess energy costs for 2023/24 are estimated to be in excess of £600,000. These costs are estimations based on previous energy use. It should also be noted that the 2023/24 estimation assumes a continuation of the Government's EBRS scheme. This continuation has not been confirmed by Government at this time. Nor do we know the trajectory of energy costs into the future.

2.7 Freedom is not in a unique position. Excess energy costs are affecting the whole leisure sector regardless of whether services are delivered in house or through a contract partner. Therefore, Freedom and other leisure providers have been actively lobbying the Government through the LGA, District Councils Network, UK Active, Swim England and directly to Fenland's local MP Stephen Barclay, highlighting the severe financial difficulty that the leisure sector is facing and the potential consequences and threat of closure of leisure facilities in future without additional financial support. Examples of this lobbying and of facilities closing elsewhere are contained in the appendices.

2.8 Cabinet should note that this paper only covers the current financial year. The Government's current EBRS support scheme ends on 31 March 2023. No confirmation of an extension has been made. Even if the EBRS remains in place next year, the excess costs for energy will exceed £600,000 for the leisure centres. Without a significant reduction in wholesale energy costs or significant Government intervention to support vulnerable industries, a further paper will be presented to Cabinet in early 2023 reviewing the situation in regards to Freedom once more.

2.9 Cabinet are asked to consider whether to financially support Freedom Leisure with their excess energy costs or provide feedback on what elements of service provision could be altered to bridge this financial gap in 2022/23 as set out in the options at section 9. Members should note that the figures within each option are an estimate.

3 Recommendations

It is recommended that Cabinet;

3.1 notes the considerable impact that the energy crisis has had on leisure businesses across the country;

3.2 notes the good work being carried out by Freedom Leisure in the leisure centres following the covid pandemic, particularly with regard to the increased number of children on the learn to swim programme every week;

3.3 recognises the essential role that the Council's leisure facilities play in helping to maintain the health of our community;

3.4 recognises the significant financial challenges that the Council itself is facing;

3.5 considers Option 2 (Section 9) - changes to opening hours for the 4 centres from 1 December 2022-31 March 2023 and advise officers whether they wish to agree to this change saving Freedom approximately £45,000.

3.6 notes Option 3 (Section 9) regarding energy billing adjustments saving £27,000.

3.7 notes Option 4 (Section 9) regarding the pending NNDR relief application.

3.8 to advise officers as to whether to add items at Option 5 (Section 9) on additional Solar PV (£350,000) and swimming pool LED lighting (£40,000) to the Council's Capital Programme and adjust the programme as per Option 6.

3.9 notes the price rises as set by Freedom in Option 8 (Section 10) of the report and agree the above CPI rises for swimming for children and concessions.

3.10 to consider and delegate to the Section 151 Officer, working in consultation with the Portfolio Holders for Finance and Leisure, to offer direct financial support to Freedom Leisure in the form of a repayable loan, on an open book basis, up to a sum of £281,254, reduced by the implementation of any of the mitigating measures as set out in the Options table in the report.

Any repayable loan shall become payable through an annual deduction of 75% of any profit generated in excess of the levels predicted in the Leisure Operators Base Trading Account (LOBTA). This is a change from the current 50/50 profit share, and will be subject to the performance of the business over the contract period.

Wards Affected	All Wards
Portfolio Holder(s)	Cllr Chris Boden, Leader of the Council and Portfolio Holder for Finance Cllr Sam Clark, Portfolio Holder for Leisure
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Background Papers	See appendices

4 Introduction

4.1 In December 2018 Freedom Leisure, a charitable trust, took over the operation and management of the Council's four leisure centres with a 15 year agreement.

4.2 This arrangement will save FDC £351,000 p.a. Additionally, a staff review of contract management staff as a result of the new Freedom contract added an additional £49,000 p.a to the annual savings, equating to £5.6 million of savings over the life of the contract.

4.3 The first 15 months of the contract (prior to the covid pandemic) proceeded better than either partner could have hoped for. Customer feedback, as well as income growth, demonstrated that Freedom had been doing a very good job on the Council's behalf. Following Covid, the Freedom operational team has worked incredibly hard to attract customers back into the leisure centres and income levels are now approaching pre-covid levels.

4.5 The Council financially supported Freedom Leisure during Covid 19 due to its contractual obligations. In financial years 2020/21 and 2021/22, this support amounted to £636,808. Of this amount, £164,988 was non-repayable. The remaining support of £471,820 becomes repayable through an annual deduction of 75% of any profit generated in excess of the levels predicted in the LOBTA. This is a change from the current 50/50 profit share, and will be subject to the performance of the business over the contract period.

4.6 Since April 2022, the contract has returned to its pre Covid 19 position with Freedom paying FDC its management fee as per the contract which demonstrates the health of the business and recovery from the impact of Covid 19.

5 Key Issues; Energy Crisis Impact

5.1 At a time when recovery from Covid is beginning to gain momentum, leisure providers are being hit hard by rising utility costs and the recent cost of living pressures on households. This may adversely impact participation rates in the leisure centres.

5.2 Freedom Leisure has asked the Council to consider providing financial support to cover the increase in energy costs. The excessive scale of these costs were not built into the bid submission when the contract was let. Without a form of intervention from the Council, the operation of leisure centres, as currently delivered, will be placed at risk.

5.3 Despite Freedom managing the leisure centres very well, the energy crisis that the country is currently experiencing has added exceptional and unavoidable operating costs into the business. Whilst Government has set up a scheme, the Energy Bill Relief Scheme (EBRS) to support businesses, the impact of the scheme is limited.

5.4 In the final 6 months of 2022/23 Freedom estimates excess energy costs of £281,254. The excess energy costs for 2023/24 based on previous usage are estimated to exceed £600,000. It should also be noted that the 2023/24 estimation assumes a continuation of the Government's EBRS scheme. This continuation has not been confirmed by Government at this time.

5.5 As a large organisation, Freedom has the capacity to absorb typical market fluctuations and respond in a more agile manner than a Council might. However, the current situation in terms of excess energy costs is untypical. These costs are not affordable for Freedom within the current contractual arrangement with the Council.

5.6 It is worth highlighting that were FDC still managing the leisure centres directly, the Council would not be benefitting from the annual reduction in cost that the Freedom contract offers, but the Council would be in a similar position with regard to paying substantial excess energy costs.

5.7 Fenland has a 15-year contract with Freedom Leisure that is starting its 5th year in December 2022. The significant increase in user numbers, particularly in swimming lessons, operational efficiencies and cashable savings that Freedom has made since Covid 19 has enabled the contract to return to its pre Covid 19 position, with Freedom paying FDC the full management fee in the current year to date. The energy crisis may have a more severe impact on local leisure facilities than Covid 19, if further government support is not made available.

5.8 Freedom and other leisure providers continue to lobby the Government through the LGA, District Council Network, UK Active, Swim England and directly to Fenland's local MP Stephen Barclay, highlighting the severe financial difficulty that the leisure sector is facing.

6 Freedom Leisure - Fenland contract current financial position compared with Leisure Operators Base Trading Account (LOBTA)

6.1 The LOBTA is the original document that Freedom used to project income and expenditure in their bid. It indicates the anticipated contract financial position in each year of the contract.

6.2 In September 2022, based on information for the financial year to date, Freedom projected an annual deficit of £18,000 - before utility cost increases. The LOBTA position projected a surplus of £43,000. This projection, although £61,000 in deficit to the LOBTA, indicates that operationally the contract is running well and recovering from the previous 2 years of Covid 19.

6.3 Whilst inflation is also a concern, energy cost increases are the most serious issue facing the management of the contract.

7 Energy mitigation measures already implemented

7.1 FDC spent in excess of £800,000 on energy mitigation measures within the leisure centres 5 years ago. These included;

- LED lighting replacement
- Combined heating and power units in three centres
- Improved control systems for heat and air controls
- Solar PV on all four leisure centres
- 2 replacement boilers

This equipment is still in place and continues to deliver the energy savings as anticipated.

7.2 Since taking on the management of the facilities, Freedom has implemented a further suite of measures to reduce costs and increase income. These include;

- Income generating interventions such as targeted price rises that reflect current and future inflation rates;
- Staff structure reviews;
- Increased efficiency of internal processes aligned to income generation;
- Improved membership acquisition, improved membership retention and a subsequently improved membership yield;
- A complete review of swimming lesson management leading to an increase of children on learn to swim courses of 61% - an additional 1,235 children learning to swim every week in Fenland pools. The total number of children on the learn to swim programme is now 3,200 per week;
- Improved rate of collecting income derived by Direct Debit, linked to an improved debt collection scheme;
- Electrical system upgrades;
- Energy metering upgrades and energy monitoring software upgrades;
- Building management system (BMS) upgrades, including air handling systems and regular review of system schedules to reduce energy use.

7.3 More recent interventions include;

- Staff and customer awareness campaigns of energy usage;
- Reduction in stored hot water temperatures by 1 degree, with a reduction in boiler temperatures by 2 degrees;
- Pool water temperatures have been reduced gradually where possible, whilst noting the potential adverse effect this could have on participation;
- Air conditioning minimum set points have been increased to 20 degrees;
- Closure of the sauna and steam rooms at the Manor Leisure Centre.

8 Freedom Leisure - staffing cost reductions to mitigate costs due to the energy crisis

8.1 Freedom Leisure is in the process of implementing further significant cost reduction actions to mitigate the energy costs increases. These include;

- A full review of the leisure centre staff structure targeting a significant reduction in staffing costs.
- Implementation of a reduction of the head office team of at least 15%.

- The completion of a 10% pay reduction for the executive team.

These measures are not immediate enough to impact on the financial situation in regards to energy costs for 2022/23 but will have a significant impact if these additional energy costs remain for future financial years.

9 Options Appraisal

There are a series of both revenue and capital options available to Cabinet to assist in mitigating the financial impact of increased energy costs on the leisure contract, in addition to further steps Freedom are also taking which are included below for completeness.

Revenue options that will make a positive impact in the 2022/23 financial year:

Option 1

9.1 FDC has the option to support Freedom Leisure financially, on an open book basis, underwriting the estimated excess energy cost for the remainder of 2022/23 of £281,254. This sum would be subtracted from the management fee received from Freedom.

9.2 If Members wish to pursue option 1, this direct financial support would take the form of a repayable loan, on an open book basis, up to a sum of £281,254 reduced by the implementation of any of the mitigating measures by FDC or Freedom as set out in section 9 of this report. Any repayable loan would become payable through an annual deduction of 75% of any profit generated in excess of the levels predicted in the Leisure Operators Base Trading Account (LOBTA). This is a change from the current 50/50 profit share and will be subject to the performance of the business over the contract period. Members should note if profits do not exceed the LOBTA levels over the 10 years remaining on the contract, the loan will be repaid.

9.3 Cabinet may decide not to support Freedom financially with the whole value of the expected excess energy costs and instead work with Freedom implementing the following alternative measures to reduce the financial impact of excess energy costs. FDC would then have the option to offer a lower level of financial support. These are:

Option 2

9.4 As a part of the Council's contract with Freedom, there are minimum opening hours across the four leisure centres when the facilities must be open to the public. These minimum opening hours can be varied with the agreement of the Council. Cabinet have an option to agree to reduce the current opening hours across all four leisure centres until March 2023 to mitigate the costs (staffing, energy etc.) incurred by Freedom as follows:

Chatteris

Current: 07.00hrs – 21.30hrs Mon - Fri / 08.00hrs – 16.00hrs Sat & Sun

Proposed: 07.00hrs – 20.00hrs Mon - Fri / 08.00hrs – 14.00hrs Sat & Sun

Expected saving £4,000 between December and March. It is expected that the impact on customer income and satisfaction will be marginal.

Manor

Current: 06.30hrs – 22.00hrs Mon - Fri / 08.00hrs – 17.00hrs Sat & Sun

Proposed: 06.30hrs – 20.00hrs Mon - Fri / 08.00hrs – 14.00hrs Sat & Sun

The expected saving is in the region of £13,000 between December and March.

George Campbell

Current: 06.30hrs – 22.00hrs Mon - Fri / 08.00hrs – 17.00hrs Sat & Sun

Proposed: 06.30hrs – 20.00hrs Mon - Fri / 08.00hrs – 14.00hrs Sat & Sun

The expected saving is in the region of £14,000 between December and March.

Hudson

Current: 06.30hrs – 22.00hrs Mon - Fri / 08.00hrs – 17.00hrs Sat & Sun

Proposed: 06.30hrs – 20.00hrs Mon - Fri / 08.00hrs – 14.00hrs Sat & Sun

The expected saving is in the region of £14,000 between December and March.

9.5 At all sites customers will have to alter their activity habits, but the centres offers many options to attend within the proposed opening hours.

9.6 The reduced opening hours for all four centres will reduce operational costs by a total estimate of £45,000 between 1st December 2022 and March 31st 2023.

9.7 It should be noted the Council will be forgoing the notice period required in the contract for agreement of new opening hours.

9.8 Whilst more severe closures, including pools, could increase the savings being made consideration of such an option is not recommended by the Leader of the Council nor by the Portfolio Holder for Leisure. However, the savings differential between the implementation of reduced opening hours and a full pool closure is limited (£23,000 extra savings in the same period) due to a full closure reducing all aquatic income to zero and reducing some membership income by c.15%. In addition to the comparatively low increase in savings levels, a full pool closure would have profound impacts on the ability of Freedom to re-open the pools with staff finding roles elsewhere during any closure.

9.9 Additionally, this alteration to the contract with Freedom would mean a reduced management fee payable by Freedom to FDC impacting the FDC revenue position, offsetting the additional saving being made.

9.10 This being the case, full closure of any of the pools would not be advised and is not a viable option for FDC and Freedom.

9.11 The position on opening hours if pursued would require review in early review as to whether to continue with the proposed reduction or revert back to the existing opening hours to inform opening hours from 1st April onwards.

Option 3

9.12 FDC's contract with Freedom states that Freedom is responsible for all operational costs, whilst receiving all income. This arrangement means that Freedom pays VAT on their energy costs. If Fenland were to pay leisure centre energy costs (with a corresponding ex-Vat increase to the management fee that Freedom pays to FDC, equating to the energy costs) then the VAT element of those costs would not be payable by the Council. Putting this in place for December 2022 - March 2023 would reduce costs by approximately £27,000.

9.13 Implementing this approach would require an alteration to our current Freedom contract.

Option 4

9.14 Freedom as a non-profit making charitable trust currently receives 80% mandatory business rate relief. Under our current Rate Relief policy, charities can receive up to a further 20% discretionary relief (effectively giving them 100% relief). The decision to award the additional 20% discretionary relief is delegated to the Chief Finance Officer.

9.15 Cabinet should note the intention for Freedom to submit an application to ARP for the 20% discretionary relief. ARP will then forward the application to the Chief Finance Officer for a decision. Within this decision it will be determined whether or not relief will be granted, how long any relief will last for and any future review dates.

9.16 It should be noted that relief can be backdated to 1st April 2022 and if this continued until 31st March 2023, would save Freedom £46,534 for 2022-23. There would be a corresponding impact on FDC business rates income for the year which would be £18,614.

Capital investment options that will make a positive revenue impact in 2023/24 financial year and future years:

Option 5

9.18 As set out in section 7, a number of energy efficiency projects have been implemented by both FDC and Freedom, however there are further opportunities to improve this position through additional solar PV units and improved swimming pool lighting as below:

a) Install additional solar PV units onto the leisure centres;

- Chatteris 10 kWp

- Manor pool 59 kWp
- Hudson 135 kWp
- George Campbell 77kWp

9.19 Capital expenditure for these works to be borne by FDC with costs in the region of £350,000 (estimation). FDC is working with the Combined Authority for funding for the additional solar PV at the Manor Leisure Centre. This support will be in the region of £80,000 to £100,000 if agreed.

9.20 Any new solar PV cannot be fitted until April 2023 due to current market demand. Members should note that all leisure centres already have solar PV in place - this would add to their capacity and reduce electricity costs directly as a result.

9.21 The total saving, at current electricity prices, for all 4 installations is estimated at £61,000 p.a. Modelling and final design of any additional PV panels will gauge the saving more accurately prior to purchase.

9.22 There would be no impact on Freedom's revenue position in the current financial year however there would be an impact from the point of installation from financial year 2023/24. The contractual terms between FDC and Freedom in operating the centres will need to be amended to reflect ongoing revenue savings to Freedom from this substantial additional capital expenditure and Members ask officers to consider options on how this is achieved.

9.23 This cost would need to be added to the FDC capital programme.

b) Install replacement swimming pool lighting at the George Campbell and Hudson pools;

9.24 The lighting at the Manor pool has been replaced as part of the leisure energy efficiency works several years ago. The Hudson and the George Campbell lighting was not replaced as the payback period was just under 10 years at that time. With the increase in energy costs the payback period will now be far shorter.

9.25 An estimate for cost / energy saved is not available at this time, but the recommendation is that this project is viable in the current energy context so long as any calculated payback period is below 10 years. Any savings would not occur in the current financial year due to the design lead time, procurement process and the fitting of the new units.

9.26 Capital expenditure for these works to be borne by FDC - costs in the region of £40,000. This cost would need to be added to the FDC capital programme.

Option 6

9.27 As part of the arrangement with Freedom, FDC is liable to replace exercise bikes (value £100,000) in year 5 of the contract and the gym's cardiovascular exercise equipment - treadmills etc (value £500,000) in year 7 of the contract. Whilst not saving against the energy revenue bill, this replacement of equipment can be pushed back by a minimum of a year, delaying FDC's capital cost of the purchase. This should form part of a reconsideration of the terms of the agreement for equipment during the remaining ten years the agreement has to run, ensuring that FDC Officers must agree that all items of equipment which are proposed to be replaced in future are only being replaced for reasons of safety, obsolescence or irreparable wear and tear. Members ask officers to consider options on how this can be achieved.

Option 7

9.28 The option of bringing the operation of leisure centres back 'in-house' at this time has also been considered, but discounted as the increase in costs faced by Freedom Leisure would also be faced by the Council if it were the operator.

9.29 Furthermore, the Council would incur significant additional costs as highlighted in the risk and financial section of this paper.

10 Further mitigation measures Freedom are implementing:

Option 8

10.1 Freedom have the flexibility to increase most prices for its services without recourse to the Council except for the following prices:

Facility & Activity	***Maximum annual price rise from reference date***
Swimming pool - Price of a casual swim for child and concessions	CPI level price rise annually
School pool hire	CPI level price rise annually
Exercise referral scheme	Access at the current daytime membership price. CPI level price rise annually
Disabled persons assistant	Free access

Price rises always have to be balanced against the impact on customer attendance. Freedom have advised that they are increasing the following prices to assist with the excess energy cost deficit from 1st December with the below revenue impact;

- £1 swim for under 5's to be replaced with £2 for under 3's and over 3's to increase to the junior swimming price of £3.60.

  Income to increase by £1,050 / month.

- £10 per year swim for over 75's to be replaced with concessionary swim price for all over 65's.

  Income to increase by £2,090 / month.

- Learn to swim sessions to be increased.

Income to increase by £4,975 / month if a 5% increase was applied for example but this charge is for Freedom to determine.

As Freedom are proposing to increase swimming pool charges by more than CPI for children and concessions, this needs the agreement of Cabinet up to 31st March 2023.

10.2 The total increase in income for the period December 2022 to March 2023 is anticipated to be approximately £32,460.

10.3 Additionally, Freedom will raise prices in January as normal across a broader number of products. These annual rises are already planned and will not increase the differential between income and costs as other costs are rising with inflation.

11 Options Appraisal summary table

Option Number	Proposal Summary	Revenue cost to FDC	Estimated in year cost saving	Estimated Capital cost to FDC
1	Underwrite entire energy cost deficit	Up to £281,000	N/A	
2	Leisure centre opening hour reduction programme		£45,000	
3	Energy billing adjustments		£27,000	
4	Freedom to apply for discretionary NNDR relief (subject to separate decision making)	£18,614	£46,534	
5	Add additional solar PV to each leisure centre Replace pool lighting in 2 leisure centres		Savings realised in 2023/24 – approx. £61,000 per year	£390,000
6	Deferral of gym equipment replacement scheme		N/A	
7	In house operation	Significant additional costs.		

8	Targeted customer prices increases by Freedom		£32,460	
Total potential operational savings for 2022/23			£150,994	

11.1 Freedom's estimated excess energy costs for 2022/23 are £281,254. Implementing the options 2-4 above plus price increases by Freedom (option 8) will reduce overall operational costs, reducing the need for financial support from FDC. If these options are all implemented, the remaining gap due to the energy costs will be in the region of £130,260.

11.2 Further savings will come on stream in 2023/24 if additional solar PV is added to the centres and lighting upgrades are carried out.

12 Risks and Financial Assessment

12.1 Members agreed, prior to the leisure centre management outsourcing process, that they wished leisure centres to continue to remain in each town.

12.2 FDC is not managing the leisure centres - it is Freedom's business, but it is very much a partnership and it is in FDC's interests that the Freedom management contract continues if Members wish to continue the provision of leisure centres for the Fenland community. If Freedom breaks the contract with FDC or the company fails as a result of unsupportive clients, then FDC's short term costs by bringing the service back in house will increase by at least £400,000 p.a. FDC would be taking back the health and safety risk, staff management, accountancy and payroll functions, administrative functions and human resources of over 160 different staff. Staff restructures took place in FDC's back office teams to reflect leisure being outsourced. These additional costs would have to be added back into the FDC budget to support any in-house change. It will not be possible to find an alternative provider of the Service at short notice.

12.3 If FDC were to take the facilities back in-house, then the current excess energy costs would be payable by the Council directly. There would be no way of avoiding these costs. This would be a similar case if another contractor took on the contract; any revised contract would include the current energy costs and the Council would not be able to avoid these costs.

12.4 Should the contract with Freedom not continue as a result of the energy cost crisis, FDC will not realise the £4.1m of savings over the outstanding period of the contract. Taking a long-term view, putting in place supportive operational changes in conjunction with Freedom, alongside potential financial support, is in FDC's best financial interests.

12.5 FDC's current MTFS highlights the requirement to find £974,000 in savings by 2026/27 as well as consideration of the added uncertainty of fairer funding, new homes bonus and business rates retention as well as current inflationary pressures which may mean this figure rises through the budget setting process. If the Freedom contract ceases and FDC brings the service in-house this will add a minimum additional base revenue cost of £400,000 per annum to the

Council. Additionally, added to this sum are the excess energy cost increases leading to a total increased revenue cost to FDC in the region of £1m p.a.

12.6 If the Council's contract with Freedom were broken, the planned savings of the Freedom contract will then not be possible leaving the Council to reconsider the strategic approach to leisure centre provision in Fenland, with financial pressures inviting a reassessment of the current level of provision across the four towns to balance the Council's budget.

12.7 There is a risk that, despite FDC's support, Freedom does not remain viable. This is a risk that FDC needs to recognise, whilst understanding the larger risk being that an unsupportive approach from FDC may lead to the contract being dissolved. FDC has asked Freedom for information regarding other client's approach to support for energy costs. The current situation (as at 2 November) is out of their 25 contracts, there is confirmed support (in the form of financial support, agreed mitigating actions or a combination of the two) in 10 of those plus another 5 where there are contractual protection against utility costs (either with a cap mechanism, a benchmark process or where the LA pays utility costs directly without a recharge). There are 10 (including Fenland) with agreed support confirmation outstanding with various meetings occurring in November.

13 Legal and Governance Implications

13.1 Subject to the options selected within this report, financial support would be managed and provided on the same basis as during COVID-19 via an open-book arrangement with payments or reductions from the management fee that Freedom pays to FDC.

13.2 Any energy mitigation measures that are selected would be fitted to the leisure centres as capital improvement works of an asset in FDC's ownership. All costs would be borne by FDC, funded via FDC's capital programme. The resulting efficiencies of the improvements would benefit the leisure operator and help to avoid (but not eliminate) future financial requests in regards to excess energy costs.

13.3 There was clear provision within the contract between FDC and Freedom to provide financial support when Covid occurred. The Government changed the law, requiring closure of facilities and staff to remain at home. This meant that the change in law clause within our contract highlighted the Council's contractual requirement to support Freedom.

13.4 The energy crisis is very different in that there is no change in law. The Council has no contractual responsibility to support Freedom and any supportive arrangement is very much in the spirit of the contract being a partnership arrangement, with the benefit of that support being in both parties' interests - and more importantly, in the interests of the community in Fenland who enjoy the use of excellent leisure facilities.

13.5 Should the package of support devised by Freedom and FDC be insufficient to meet the challenge of the excess energy costs then the contract with FDC could become unviable. If Freedom took this view and wished to break the contract with FDC, our contractual terms are clear in regard to compensation due to FDC;

a) Where the Authority carries out a Retendering Process, the Retendering Costs;

b) where the Authority carries out a Retendering Process, an amount equal to the aggregate of the Retendered Annual Payment less the Current Annual Payment where it is a positive number

c) All other Direct Losses which the Authority suffers or incurs arising out of any breach of this Agreement or as a result of the termination of this Agreement including (without limitation) any liability to any third party,

13.6 These terms are clear, with item b) above having a potential of incurring significant costs on Freedom should they break the contract. Retendering the contract with the current state of the economy, Covid recovery and the excess energy costs is likely to return tenders that incur the excess energy costs within the contract itself, with the overall contract unlikely to be as favourable to FDC as the Freedom contract - if a contractor did tender.

14 Appendix I

Local government Association and UK Active

Briefing note for councils – the impact of rising energy costs to the leisure sector

Appendix 1 -
Briefing note from L

15 Appendix II

Joint letter to Government from

- Chartered Institute for the Management of Sport and Physical Activity
- Chief Leisure Officers Association
- Community Leisure UK
- District Council's Network
- Swim England
- UK Active

Appendix 2 - Letter
to the Secretaries of

16 Appendix III

Useful links for context

Community Leisure UK Statement on Energy Bill Relief Scheme - Community Leisure UK

Temporary closure of pools due to energy costs 'the tip of the iceberg' (swimming.org)

17 Appendix IV

Rye swimming pool closure Press Release

Appendix 4 -
Rye_Pool_Closure pı