


Cabinet Report - 5		
Date:	20 January 2022	
Report Title:	Freedom Leisure - Covid-19 impact and Fenland District Council Support	

## 1 Summary

For Cabinet to consider financial support to be offered to Freedom Leisure for the period January – March 2022.

## 2 Key Issues

- 2.1 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.
- 2.2 This arrangement, after Hudson Leisure Centre capital costs and gym equipment replacement costs, has saved FDC £351,000 p.a. Additionally, a review of contract management staff as a result of the new Freedom contract added £49,000 p.a. to the annual savings, equating to a total of £5.6 million of savings over the life of the contract.
- 2.3 Freedom is dependent on income and cash flow to manage the business. As a large organisation, they have capacity to absorb market conditions and respond in a more agile manner than a Council might. The business is, however, dependent on income from paying customers therefore following the significant impact of Covid 19, the Council has provided a series of support packages in line with the Council's leisure contract.
- 2.4 Leisure centres have reopened and performance is more positive than expected – but remains below pre-covid rates.
- 2.5 In early December Freedom was expecting an operating surplus for the final quarter of the year. Given the points made above it is prudent to not expect this to occur and to work on an operational support cost of £0, whilst continuing to work together on an open book basis and deferring management fees.
- 2.6 The Council has an expectation that, with effect from April 1<sup>st</sup> 2022, it will no longer be necessary to extend the financial support which has been provided to Freedom Leisure following the operating restrictions imposed on leisure centres by Central Government in Spring 2020.

## 3 Recommendations:

### It is recommended that:

- 3.1 Fenland District Council provides the Phase VII financial relief to Freedom Leisure set out in these recommendations and detailed in section 5 of this report.
- 3.2 FDC defers the monthly management fee of £39,600 per month for January – March 2022, at an estimated cost to the Council of £118,800, repayable in accordance with the terms set out at paragraph 3.4 of these recommendations.
- 3.3 FDC continues to support Freedom Leisure on an open book basis.

- 3.4 Repayment of the £118,800 described in paragraph 3.2 of these recommendations shall become payable through an annual deduction of 75% of any profit generated in excess of the levels predicted in the LOBTA (Leisure Operators Base Trading Account). 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.
- 3.5 The Monitoring Officer and s.151 Officer are authorised to put in place all necessary arrangements to give effect to the agreed recommendations to include entry into the necessary legal arrangements and expenditure of the amounts described from existing budget provisions.

Wards Affected	All Wards
Portfolio Holders	Cllr Sam Clark, Portfolio Holder for Leisure Cllr Chris Boden, Leader of the Council and Portfolio Holder for Finance
Report Originators	Phil Hughes, Head of Leisure Services Carol Pilson, Corporate Director Peter Catchpole, Corporate Director Amy Brown, Chief Solicitor
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Background Papers	2020/21 Cabinet Reports 2021/22 Cabinet Reports NLRf application pack  Confidential: Freedom Leisure modelled income and expenditure Confidential: LOBTA - Leisure Operators Base Trading Account

#### **4 Reconciliation and summary of support provided to Freedom Leisure from April 2020 to March 2021 and support provided from April 2021 - December 2021**

##### **4.1 2020/21 Financial Reconciliation**

The total support agreed by Cabinet for Freedom for financial year 2020/21 consists of:

Phase I support	£277,668	
Phase II support	£276,582	
Phase III support	£295,322	
<b>Less:</b>		
Income support grant	(£321,139)	
NLRF grant	<u>(£69,962)</u>	
<b>Net total support 2020/21</b>		<b><u>£458,471</u></b>

##### **4.2 2021/22 Financial Support**

Net Phase IV support (April – June 2021)		
Deferred management fees payable to FDC:	£114,000	
Financial support	£37,998	
<b>Less:</b>		
Income support grant	(£80,670)	
NLRF Grant	<u>(£37,998)</u>	
Net Phase IV support (April-June 2021)		£33,330
 Net Phase V Support (July – September 2021)		£114,000
Net Phase VI Support (October – December 2021)		<u>£114,000</u>
<b>Net total support April – December 2021</b>		<b><u>£261,330</u></b>

#### **5 Proposed Phase VII Support: January – March 2022**

- 5.1 Fenland has a contract with Freedom Leisure that is now into the fourth year of a 15-year contract. The significant efficiencies and savings that the contract has allowed FDC are expected to return during the remaining contract term.
- 5.2 The recovery of the leisure sector from April 2021 onwards has been far more positive than initial modelling and financial projections. The Fenland contract with Freedom is doing particularly well, when compared across the other local authority contracts that Freedom manages. Learn to Swim memberships are performing particularly well, with fitness memberships performing in the top quartile of Freedom's local authority contract too.
- 5.3 Whilst the overall recovery picture is more positive than anticipated, Freedom will still require some support from FDC in the coming months. Whilst operational costs are expected to be cost neutral – subject to the impact of omicron - FDC is expected to need to defer the management fee for the January – March 2022 period of £118,800. This will be recouped from Freedom on similar terms to previous management fee deferments – by a larger share of any future excess profits that the contract may make.

- 5.4 The estimated net total support cost to FDC for the period January – March 2022 will be £118,800.
- 5.5 It should be noted that the Council is keen to recoup the financial support identified in this report using this mechanism. However, the Council recognises that repayment levels are uncertain due to the nature of future income levels, determined by customer demand and due to the fact that the profit share only applies after the contracted profit has been taken by Freedom.
- 5.6 The Council has an expectation that, with effect from April 1<sup>st</sup> 2022, it will no longer be necessary to extend the financial support which has been provided to Freedom Leisure following the operating restrictions imposed on leisure centres by Central Government in Spring 2020.

## **6 Contractual Options Assessment**

- 6.1 Cabinet should be aware that previous support made to Freedom was a contractual obligation. The continuing shortfall in Freedom's income is a direct result of the Covid 19 changes in law, and it is reasonable to argue that the change of law provisions in the contract do enable FDC's level of support to reflect the fact that Freedom's income will not return to pre-Covid levels immediately. There is a contrary argument that FDC has no obligation to support Freedom financially from 19 July when the law changed back to the pre-Covid law (i.e. no social distancing). However, even if this were correct, FDC is not obliged under the contract to require this adjustment and there are sound commercial arguments not to do so in the context of FDC's relationship with a valued, long term partner – these are set out below and provide a good argument that FDC is acting in the same way as a private sector operator would in not adjusting the payments under the contract and thus there is no subsidy to Freedom.
- 6.2 To ensure that FDC maintains the long-term contract with Freedom and the future savings that this will accrue to the Council, as well as offering the potential to recoup the deferred management fees, an approach of continuing to support Freedom as a valued partner is recommended.
- 6.3 If the Council attempts to negotiate a reduction in the currently proposed relief package such that only partial support is provided, it will impact on the services that can be delivered and would therefore put Freedom in a disadvantageous position in terms of re-establishing its competitive position in the market and ultimately the level of profit required to offset the payments made.
- 6.4 If the Council provides the relief package on the terms identified, due diligence suggests that this will put Freedom in the best possible business position to recover over the coming year. Nevertheless, it is acknowledged that there remains a possibility that trends will not evolve as expected which could result in a requirement to remodel the proposed operational model and / or ultimately to revisit the relief package. Of all the options however, the report recommendation provides Freedom and the Council with the best opportunity to work towards the realisation of the originally predicted savings and programme of improvements originally planned for the benefit of our community.

In conclusion, continued deferral of the management fee maintains the partnership in the best possible position for a return to pre-covid financial performance in April 2022, with no further subsidy to the contract. It also avoids the wider implications of taking the leisure centre service back in house where the effect would be evident not only in budgetary terms but also potentially in relation to the level of service that could be provided.