

Key Decision Required:	NO	In the Forward Plan:	NO
-------------------------------	-----------	-----------------------------	-----------

CABINET

URGENT REPORT OF THE MONITORING OFFICER

12 NOVEMBER 2021

A.14 REDUCTION IN LEISURE CENTRE MEMBERSHIP FEES – DECISION MAKING OMISSIONS

(Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To receive the Monitoring Officer's report regarding the omission in respect of the reduction of the Leisure Centre Membership Fees which were reduced without the required decision making in place and consequently, the omission has given rise to unlawfulness.

EXECUTIVE SUMMARY

The Monitoring Officer is under a statutory duty to report an omission to Cabinet for them to give consideration to the reduction of Leisure Centre Membership Fees without the required decision making in place.

A 50% reduction of the approved charge for the Leisure Centres were implemented in 2020 during the transition back to a full service. A briefing note was presented to the Council's Management Team at the time, which included a proposal for a free month in August 2020, but highlighting these suggestions would still be the subject of formal decision making. Fees were increased to 75% of the approved charge at the beginning of 2021. Unfortunately, no decisions were made, recorded or published in relation to the reductions implemented.

Cabinet is not able to retrospectively agree the backdated fees, but it may wish to endorse the free month, the reduction to support the transitional period during restrictions being lifted (50% in 2020) and through the on-going refurbishment (25% in 2021). Due to the consequence of a Section 5 Report, Cabinet are requested to approve the 25% reduction in fees going forward for the remainder of 2021/22 and request options available to future leisure centre fees, which will be reviewed in January 2022. The funding of these fees and impact to the Councils Revenue Budget in 2021/22 is covered within the Financial Performance Report within this Cabinet's agenda and subject to a separate decision.

In respect of the financial implications in 2020/21, adjustments to the budget were included within the financial performance reports during the year, including the outturn position for 2020/21 that reflected the phased reopening of the facilities. It is important to highlight that the adjustments made to the budget reflected the overall impact of the

pandemic, which included the reduction in fees, along with the support from the Government's Sales, Fees and Charges Compensation Scheme.

RECOMMENDATIONS

It is recommended that Cabinet:

- (i) **Receives and considers the Monitoring Officer's report and in response, endorses the reduction in Leisure Centre Membership Fees during 2020 and 2021 to support the transitional period during COVID 19 restrictions being lifted and the refurbishment of Clacton Leisure Centre;**
- (ii) **approves the 25% reduction in Leisure Centre Membership fees for the remainder of 2021/22, subject to the agreement of the proposed in-year adjustments to the budget as set out in Appendix H to the Financial Performance Report – Second Quarter 2021/22;**
- (iii) **notes a review of Leisure Centre Membership Fees for 2022/23 will be undertaken and requests that the decision is made by the Portfolio Holder for Leisure & Tourism; and**
- (iv) **acknowledges an internal control arrangements have been increased and an Economy and Leisure Governance Plan has been implemented and the Monitoring Officer will receive regular updates on the decision making.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

It is essential that the Council ensures its actions are lawful and the appropriate decision making is undertaken to demonstrate good governance.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Financial Performance Report for Quarter 2 included within the Cabinet Agenda for 12th November includes the following text:

“Leisure Facilities Income – Based on current estimates, it is expected that leisure income will be behind profile by £1.000m by the end of the financial year due to the on-going impact from COVID 19, which includes the reduction in memberships fees by 25% given the reopening restrictions in place during the year. However, it is estimated that this will be offset by £0.250m, following the Government's commitment to extend the sales, fees and charges compensation scheme into the first quarter of 2021/22. It is proposed to meet the balance of £0.750m by applying the general COVID 19 grant received from the Government with some additional commentary set out further on in this report relating to wider use of this COVID 19 funding. The proposed adjustment is included within Appendix H.”

Risk

Approval from Cabinet is required for the continuation of the reduced membership fees, there is a reputational risk associated with this decision, as the Council has not followed its governance arrangements in this instance but operational measures and internal controls have been amended. Decisions within the service area will be overseen by the Interim Corporate Director for Project Delivery and an Economy and Leisure Governance Plan is being put in place, which include regular updates for the Monitoring Officer to ensure that this event does not occur again. These will also be discussed in 121s with the relevant officers.

External Audit will be provided with a copy of this report and the Cabinet's decision in respect of it.

LEGAL

Under Section 5A of the Local Government and Housing Act 1989, the Monitoring Officer is under a statutory duty to report to Cabinet in relation to an executive function, if they consider that any omission has given rise to unlawfulness. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered. The requirements of Section 5A are reflected within Article 12 of the Council's Constitution. Both the Head of Paid Service and Chief Financial Officer have been consulted prior to this report.

It came to the Section 151 and Monitoring Officers' attention that the required decisions for approving the reductions in Leisure Centre Membership Fees had not been made or published by Officers, as required, when acting under delegated powers.

Assistant Directors have been authorised by Cabinet to decide the level of annual discretionary fees and charges for their service (including any in-year changes) for inclusion within the Council's corporate schedule of fees and charges. This delegation must be undertaken in consultation with the relevant Portfolio Holder (Part 3.41 of the Constitution). Delegated powers to Officers must be exercised in accordance with the Constitution which requires a formal decision to be recorded (Part 3.40). Regulation 13 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires decisions made by officers to be published.

Officers are also required to consider whether the decision they are about to make is a Key Decision, whereby additional legislative requirements as set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 must be adhered to before a decision can be lawfully made. In this instance, the reduction of fees and charges would likely result in a negative impact in excess of £100,000 on the local authority's budget for the service or function to which the decision relates. Therefore a decision required 28 days-notice to be lawful and subject to call in unless provided an exemption.

Following receipt of such a report, Cabinet are required under Section 5A, to notify all members of the outcome of receiving and consideration of the Monitoring Officer's report and a copy of the minutes will be circulated to all members.

All Senior Officers received detailed training from the Monitoring Officer on the governance framework as part of a series of sessions and at the Senior Managers' Forum. The governance team have offered and have attended individual managers meetings to provide additional guidance and the team are always willing to provide support and assistance to Officers when they are making decisions or taking reports forward to Council, Cabinet, Committee or Management Team.

The Section 5 Report is not a Key Decision, however the financial impact of the reduction of the Leisure Centre Membership Fees from the approved charge is contained within the Financial Performance Report for Quarter 2, which has been included within the Council's Schedule of Forthcoming Decisions.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Wards ALL

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Tendring Leisure Centres closed on 20 March 2020 and reopened on Monday 27 July 2020 in the first national lock down. Membership fees were frozen during this period, although members had pre-paid for March. Decisions were made by the Leader, under the urgency provisions implemented through the pandemic, and reported to Cabinet following each decision for maximum openness and transparency.

Existing members received free access during August 2020 as a "thank you" to incentivise them to remain members, and in lieu of the days in March which they missed out on.

From September 2020 membership fees were set at 50 per cent, as not all services were available.

A second national lock down closed Leisure Centres from 5 November 2020 to 2 December 2020, when Leisure centres were able to reopen as Tendring was in "Tier 2". Membership fees were increased to 75 percent of their value in December, which was implemented in January 2021.

However, a third lock down forced closure of facilities in late December 2020, which eventually re-opened on 12 April 2021 with some restrictions on leisure centre use.

'Freedom day' on 19 July 2021 released further restrictions nationally, although Tendring Leisure Centres took a phased approach to full reopening. All facilities were not made completely available until mid-October 2021, with the final phase including sports which were unaffiliated and had no access to Governing Body 'Covid safe' guidelines and birthday parties.

Today, the facilities available to members remain reduced due to the ongoing refurbishment at Clacton Leisure Centre, which is expected to complete in November 2021.

A discussion note was considered by Management Team on 23 June 2020 prior to re-opening on 27 July 2020, which included the proposal for a free month and then 50 per cent fees for members. This note highlighted that the proposals would be subject to formal decision making and monitored monthly in consultation with the Portfolio Holder. Although consultation took place with the Cabinet Member throughout the lockdowns, no decisions were published at the time.

CURRENT POSITION

A decision was published at the end of October 2021 to review membership fees following the Clacton Leisure Centre fully re-opening after refurbishment (scheduled for November) and seeking to summarise the position to date. Upon seeing this decision the Monitoring Officer advised it lacked clarity, as the implications of the decision were not clear, it is also not possible for a decision in October 2021 to retrospectively cover previous fee changes and due to the required decision making not being followed, the omission had given rise to unlawfulness and a Section 5 Report was required.

FURTHER HEADINGS RELEVANT TO THE REPORT

None

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

None