

FROM: Audit and Risk Manager
TO: Head of Safer Communities,
Leisure and Environment
C.C. Chief Executive
Head of Finance
Sports and Leisure Contract
Manager
Portfolio Holder (Cllr Falp)

SUBJECT: Leisure Facilities Contract
DATE: 31 March 2023

1 Introduction

- 1.1 In accordance with the Audit Plan for 2022/23, an examination of the above subject area has recently been completed by Ian Davy, Principal Internal Auditor, and this report presents the findings and conclusions for information and, where appropriate, action.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.

2 Background

- 2.1 Since 1 June 2017, the Council's leisure centres have been managed by Everyone Active (which is part of Sports & Leisure Management Ltd (SLM)).
- 2.2 Client-side management of the contract is carried out by staff in the Sports & Leisure section of the Safer Communities, Leisure and Environment department.

3 Objectives of the Audit and Coverage of Risks

- 3.1 Contract management audits do not follow the 'normal' risk-based approach, with the audit reviewing the management and financial controls in place.
- 3.2 The audit largely followed the standard contract monitoring programme although the Contract Award and the Contract Termination and Renewal areas were not covered as the award was covered by the previous audit of the topic and the contract has another three years to run before the renewal (extension) is considered. The scope therefore included:
- Service provision and monitoring
 - Contract amendment and variations
 - Finance
 - Contingency planning and risk management.

3.3 The control objectives examined were:

- Staff are aware of what the Council aims to achieve in relation to the services that are being provided
- Contractors are aware of the services to be provided
- Works are undertaken to agreed standards
- Permanent changes to the contract are formally agreed
- The Council only pays for work that has been previously agreed
- Budget variances are limited as the budgets are set appropriately in line with known areas of income and expenditure
- The Council is aware of any potential budget variances
- Payments are valid and accurate and processed in accordance with the appropriate conditions of the contract
- All income due to the Council is received
- Contingency plans exist to ensure that the service continues to be provided
- The Council would not be financially disadvantaged should the contractor fail to provide a service
- The Council will not be liable for any claims received due to the work of the contractor
- The Council and the contractor are aware of the risks in relation to the services provided and have taken steps to address them.

3.4 The outsourcing of the management of the Council's leisure facilities helps the Council to achieve a number of aims set out under the Business Strategy. Specifically, these fall under the External People strand regarding impressive cultural and sports activities, Internal Services strand regarding the maintenance and improvement of services and the Internal Money strand regarding obtaining better returns on the Council's assets.

4 Findings

4.1 Recommendations from Previous Reports

4.1.1 The current position in respect of the recommendations from the audit reported in March 2019 is as follows:

Recommendation	Management Response	Current Status
1 The summary customer comments reports should include all relevant complaints / compliments.	Whilst we have a good handle on customer complaints / compliments from the data we receive from Everyone Active and from our regular client meetings, we acknowledge that we need to agree with Everyone Active a method of collecting customer satisfaction data.	The reports are still in the same format as at the time of the last audit (see 4.2.13 and 4.2.14 below).

Recommendation	Management Response	Current Status
2 A formal log of all agreed contract variations should be maintained.	We have a process for contract variations. However, we will review it and make any required amendments, including the use of Change Control Notes as set out in the contract.	The majority of changes since the last audit have been covered by formal 'Deeds of Variation' which are not entered onto the log. Only two, more minor, changes have been entered onto the log that is being maintained (see 4.3.5 to 4.3.7 below).

4.2 Service Provision and Monitoring

- 4.2.1 The contract commenced in June 2017 and, as such, predates the majority of the current Council policies although there are some references to specific, relevant, policies within the contract documentation and the 'aims' of other policies are also indirectly referenced:
- HR policies were noted in the service specifications in the ITT (invitation to tender) documentation.
 - The 'Background' section of the main agreement document highlights that the contract was being agreed following an advert that had followed the OJEU procedures in place which would have complied with the Procurement policy at the time.
 - The ITT document highlights that 'The booking system ... shall provide online and interactive access...' in line with the Digital Strategy.
- 4.2.2 The latest annual report from Everyone Active also includes their outline plans and aims in terms of the 'Carbon Net Zero' agenda in place at the Council.
- 4.2.3 The Sports and Leisure Contract Manager (SLCM) advised that, whilst there is no current leisure strategy, the service specification included within the agreement highlights the general service requirements along with more specific 'aims' in terms of programming and community / sports development. As part of their submission, the contractor included a series of 'service delivery proposals' (method statements) as to how the services under the contract would be delivered.
- 4.2.4 The SLCM advised that she is the nominated contract manager and, due to service restructures, she has also effectively been the contract administrator recently. However, the Sports Assistant has been undertaking the site inspections and other aspects of the role and two new staff are to be appointed which will allow her to delegate the contract administration role fully to another staff member.
- 4.2.5 The Strategic Procurement and Creditors Manager confirmed that the SLCM had attended a three-hour procurement, commissioning and contract management

awareness training session in December 2022. The SLCM advised that she had also previously undertaken an advanced APSE (Association of Public Service Excellence) training course on contract management.

- 4.2.6 The Service Area Plan (SAP) for Safer Communities, Leisure and Environment includes four specific performance measures in relation to the provision of the services covered by the contract.
- 4.2.7 Performance against these measures is included within the SAP spreadsheet on a quarterly basis with commentary included where appropriate along with comparator figures from previous years, although the SLCM highlighted that it is hard to compare to previous years due to COVID.
- 4.2.8 In terms of reporting the figures, the Performance Management Officer advised that, following the provision of the figures, he compiles the data and presents it to SLT and Councillors in the quarterly report. Management and Councillors also have access to the raw data behind the quarterly reports on the Business Intelligence Portal (which can be accessed at any point) to enable them to easily see longer term trends in performance which may not be captured in the quarterly reports. Everyone Active also produce their own annual performance report which is shared accordingly.
- 4.2.9 The SLCM advised that, as well as the monitoring of the performance management data and the annual reporting there are weekly meetings with the Everyone Active contract manager and quarterly 'partnership' meetings which the individual centre managers also attend.
- 4.2.10 Site inspections are also undertaken at each centre covering issues such as health and safety, cleanliness and general maintenance along with reviews of compliance paperwork (e.g. fire alarm checks etc.). The sites also have to provide details of comments / complaints (see below), accidents and microbiology and these will be reviewed when received to assess whether there are any issues that need to be resolved.
- 4.2.11 The SLCM highlighted that the main issues at present tend to relate to defects / snagging and issues with the (Astro) pitch at John Atkinson (Myton). However, these are issues that the Council has to address as opposed to performance issues by Everyone Active.
- 4.2.12 When required, other meetings will be held to discuss topics such as maintenance, staffing and finances as well as future changes to the contract (e.g. discussions have been held regarding the new dual use agreement at the new Kenilworth School and the taking on of the athletics track).
- 4.2.13 Monthly customer comments reports are received which include details of average customer (satisfaction) ratings but these do not give any indication of how the scores are derived (i.e. how many returns have been received to arrive at the average score).
- 4.2.14 It is recognized that complaints received by either Everyone Active or the Council are discussed in detail at the monthly contract monitoring meetings. The customer comments reports (referred to above) include a summary of

comments and minor issues with the report showing how the issue has been resolved. This report is only a summary of the comments received and does not necessarily include all relevant information to enable the Council to identify any issues that have been escalated. This issue was also raised at the time of the previous audit.

Risk

The Council may not be aware of all relevant issues raised in relation to the operation of the leisure centres.

Recommendation

The report format should be reviewed to ensure that it contains information relevant to the Council at the appropriate level of detail to enable the appropriate steps to be taken.

- 4.2.15 The SLCM advised that if comments / complaints are received by the Council they will be referred to the relevant leisure centre in the first instance. If the issue needs to be escalated, a formal hierarchy will be followed, although the this shows an outdated staffing structure.

Advisory

The complaint escalation hierarchy should be updated to reflect the current staffing structure.

4.3 Contract Amendments and Variations

- 4.3.1 At the time of the previous audit, it was noted that a 'Deed of Variation' had been signed to cover the delays to the contract in respect of the building works overrunning at Newbold Comyn and St Nicholas Park leisure centres.
- 4.3.2 A further Deed of Variation has subsequently been agreed (signed by the contractor and sealed by the Council) in respect of Coronavirus Events, the associated forms that are to be used and changes to finances as a result.
- 4.3.3 There had also been an interim variation (agreed in July 2020) that covered the period between 1 July 2020 and 31 August 2020. This also related to COVID and the changes to finances that were being enacted as a result.
- 4.3.4 A current Coronavirus event form is in effect which waives the concession fee due. In place of this, the agreement is that the fee payable by the contractor for 2022/23 will be 80% of any surplus made.
- 4.3.5 Alongside the 'formal' variations, there are other changes to things such as the timetables which are recorded on a variations register. The majority of the variations recorded were from 2018 (i.e. prior to the previous audit) with only two subsequent updates.
- 4.3.6 One of these covered the social distancing requirements due to COVID with the other relating to the introductions of virtual aquafit instead of lane swimming at

St Nicholas Park Leisure Centre. This latest change was seen to be discussed in the partnership meeting in July prior to the start of the pilot and then discussed in the subsequent (October) meeting with a further session being 'investigated'.

- 4.3.7 The SLCM advised that, due to COVID, there have not been many 'small' changes made, with the relevant changes being covered by the COVID Event Deed of Variation. A new Deed of Variation will be drawn up following the latest (and last) Coronavirus event form to formalise some of the changes going forward.
- 4.3.8 Due to the delays to the completion of the leisure centres referred to above, the Council had been required to make some 'loss of revenue' payments to the contractor (under Schedule 23 of the contract). It was expected that there would have to be similar payments made with regards to the 'Phase II' works at the Kenilworth leisure centres.
- 4.3.9 However, the SLCM highlighted that, as the centres were forecast to be making losses (due to COVID) prior to closing, these Schedule 23 payments were not required with the loss of revenue due to COVID being covered by the Coronavirus deed of variation referred to above.

4.4 **Finance**

- 4.4.1 The SLCM advised that the budget for the year is based on the forecast income from Everyone Active. The current year budget on Ci Anywhere shows the correct figure for 2022/23 based on the agreed 80:20 split of the forecast surplus as set out in the latest Coronavirus event form. The form also highlights that the concession fee for the year has been waived, so this is not included in the budget for the year on Ci Anywhere.
- 4.4.2 Minutes of the 'high-level' catch up meeting held in January 2022 and the email regarding the 2023/24 forecast were reviewed which confirmed that the figures provided by Everyone Active were subject to appropriate challenge.
- 4.4.3 Everyone Active provide spreadsheets on a monthly basis that show the detailed transactions, a summary of these transactions into the relevant codes for the year to date and then a further summary showing the actual figures.
- 4.4.4 The Principal Accountant inputs these figures into a spreadsheet along with actuals from the previous year to compare performance against the forecast figures and these are then discussed with the SLCM who will raise any larger variances with the Everyone Active contract manager for explanation.
- 4.4.5 As the concession fee for the year has been waived, the only transaction for the year will be the surplus share which will be invoiced for after year end. This will be raised once Everyone Active have provided their March spreadsheets and the figures have been checked.
- 4.4.6 An invoice for the 2021/22 financial year was found to have been raised correctly, with the Principal Accountant providing a spreadsheet showing how the figure had been calculated.

4.5 Contingency Planning and Risk Management

- 4.5.1 The SLCM advised that a 'Plan B' had been discussed during COVID as to what would happen if Everyone Active were to go out of business or walked away from the contract. Whilst this was not required as part of COVID, she suggested that the principles behind it would effectively form the contingency plan should either of the scenarios occur in the future.
- 4.5.2 The contract document includes a 'Form of Guarantee' (i.e. a parent company agreement guaranteeing the performance of the contract by the contractor). A signed and sealed copy of the guarantee was found to be in place. The SLCM advised that, due to the current economic situation and issues that the leisure industry is experiencing across the country, credit checks are also being performed on the company.
- 4.5.3 The contract also sets out the insurances that the contractor is expected to hold. This includes 'Property Damage Insurance', 'Third Party Public & Products Liability Insurance' and 'Business Interruption Insurance'.
- 4.5.4 The SLCM provided copies of the contractor's Employers' Liability Insurance certificate along with details of the other relevant insurances held by way of a broker's letter. Upon review of the documents provided, it was confirmed that the insurance held was in line with the requirements and was in force as appropriate at the date of the review.
- 4.5.5 A Sports and Leisure Services risk register was provided from October 2022. This had been incorporated into the updated Safer Communities, Leisure and Environment risk registers (generic and service specific) which are included with the Service Area Plan document.
- 4.5.6 The risks included are considered to be appropriate, including risks relating to the failure of the contract along with a number of more specific impacts.
- 4.5.7 The contractor has a regional health and safety manager who reviews sites. External reviews are also undertaken as part of the QUEST assessments with the both reviews covering the risk assessments in place.

5 Summary and Conclusions

- 5.1 Following our review, in overall terms we are able to give a SUBSTANTIAL degree of assurance that the controls in place in relation to the Leisure Facilities Contract are appropriate and are working effectively.
- 5.2 The assurance bands are shown below:

Level of Assurance	Definition
Substantial	There is a sound system of control in place and compliance with the key controls.
Moderate	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.

Level of Assurance	Definition
Limited	The system of control is generally weak and there is non-compliance with controls that do exist.

5.3 One issue was identified that requires further action:

- The summary customer comments reports does not include all of the relevant information to enable the Council to identify issues raised and escalated to allow for appropriate steps to be taken.

5.4 A further, minor, 'issue' was identified where an advisory note has been reported. In this instance, no formal recommendation is thought to be warranted and addressing this issue is discretionary on the part of the service.

6 **Management Action**

6.1 The recommendations arising above are reproduced in the attached Action Plan (Appendix A) for management attention.

Richard Barr
Audit and Risk Manager

Action Plan

Internal Audit of Leisure Facilities Contract – March 2023

Report Ref.	Recommendation	Risk	Rating*	Responsible Officer(s)	Management Response	Target Date
4.2.14	The report format should be reviewed to ensure that it contains information relevant to the Council at the appropriate level of detail to enable the appropriate steps to be taken.	The Council may not be aware of all relevant issues raised in relation to the operation of the leisure centres.	Low	Sports and Leisure Contract Manager	The reporting of customer comments will be changed accordingly.	September 2023

* The ratings refer to how the recommendation affects the overall risk and are defined as follows:

High: Issue of significant importance requiring urgent attention.
Medium: Issue of moderate importance requiring prompt attention.
Low: Issue of minor importance requiring attention.