

**CHANGE OF MANAGEMENT ARRANGEMENTS FOR STOCKPORT ACTIVE CIC  
TO BECOME AN AGENT OF STOCKPORT COUNCIL**

Report of the Director of Finance

**1. INTRODUCTION AND PURPOSE OF REPORT**

- 1.1 This report proposes a change to the current management arrangements between Stockport Council and Stockport Active CIC (trading as Life Leisure).
- 1.2 The proposed arrangements will further embed the CIC as a strategic and operational delivery partner by designating it an agent of the Council in respect of operating Council-owned/leased leisure facilities, the delivery of active communities programmes and specialist physical activity services. The CIC will be retained as a separate legal entity and carry out the same range of responsibilities on behalf of the Council as at present, but the basis on which they operate will change.
- 1.3 The proposed arrangements will enable a greater degree of integration between the CIC and the Council and allow the Council to take advantage of new taxation arrangements in respect of leisure provision and reduce the annual cost of the Council providing these services.

**2. BACKGROUND**

- 2.1 Following an options appraisal, Stockport Active CIC (trading as Life Leisure) took over responsibility for functions previously carried out by Stockport Sports Trust (SST) on 1<sup>st</sup> April 2022 which include:
  - The operation of 8 leisure centres owned or leased by the Council
  - The delivery of active communities programmes to encourage our residents to participate in physical activity
  - The delivery of a specialist physical activity service which supports those recovering from or at risk of developing a serious illness
- 2.2 The key aim of these arrangements was to provide stability following the trading impact of the Covid 19 pandemic, improve strategic alignment with the Council and increase the operational control which the Council had over the management of its leisure centres and delivery of active communities programmes. The arrangements were underpinned by leases on Council-owned/leased assets to run until 31<sup>st</sup> March 2027 with an option to extend until 31<sup>st</sup> March 2029. A co-terminus services agreement outlines the services which the Council requires Stockport Active CIC to deliver and documents the

mechanisms by which funds will flow between the Council and the CIC.

- 2.3 Stockport Active CIC is a wholly-owned company of Stockport Council. The Board is currently made up of Council officers. Due to the promotion of one of the existing Board to the position of Director of Finance, the Director of Finance will shortly resign from the Board. However, the CIC is a distinct legal entity which generates its own income to offset the costs of the services it provides. The Council provides revenue support through a management fee arrangement which is paid quarterly.
- 2.4 The implementation of the new model in April 2022 has not only provided a period of stability for the management of Council owned/leased leisure centres and delivery of active communities programmes, but also delivered almost complete recovery of income generation following the impact of the Covid 19 pandemic and significant performance improvements on the previous model. These include:
- Recovery of membership levels to 102% of pre-pandemic levels which is around 16% better than the UK average
  - The Specialist Physical Activity Referral Service has provided a service for 2800 people with long term health conditions annually, reducing the need for more traditional interventions by the health service. This represents an increase in participants of 53% over the last three years
  - Over the first 3 years of operations Stockport Active CIC has grown income by 59%, whereas costs have only grown by 32%, resulting in a decrease in annual revenue funding (management fee) provided by the Council of £1.1m
- 2.5 These positive achievements have been delivered against a backdrop of major challenges to the sector, including:
- National Living Wage: Staffing costs have risen by 43% over the last three years as a result of significant annual increases in the National Living Wage
  - Utility costs: Volatility in the utilities sector since 2022 have seen costs at their peak being 200% (almost £2m) higher than at the inception of the CIC. These costs have now settled but are still 50% higher than in 2022
  - Repairs and maintenance: Costs have increased by 42% over the last three years as building and plant maintenance requirements grow
- 2.6 Although there have been successes of the new CIC model, the organisation still requires significant levels of annual revenue funding from the Council via the annual management fee. The Council and CIC are actively working to reduce the overall cost of operating Council owned/leased leisure centres and the delivery of active communities programmes as part of the MTFP.
- 2.7 Since the implementation of the CIC in April 2022, new opportunities have arisen to achieve financial benefit by bringing the management of the CIC closer to the Council which have not yet been fully explored:
- Corporate Core/Shared Services: As part of the MTFP proposals for 2025/26, a savings target has been set for the Council to reduce overall expenditure by

achieving greater operational integration between the Council and its wholly-owned subsidiaries (Stockport Active CIC, Stockport Homes Group, Totally Local). This is being progressed as a separate workstream across all four bodies with an overall savings target of £0.500m to the Council group overall over two years.

- Stockport Active CIC's relationship to the Council. The CIC is currently providing services on behalf of the Council and the Council provides funding to support the delivery of the services. The Council is wholly in control of the CIC. By changing the status by which the CIC is providing these services and designating the CIC as an agent of the Council, the Council could take advantage of recent VAT changes which could reduce the cost of operating leisure services to the Council by £0.700m per annum.
- The reduction in cost will contribute to the achievement of the nil management fee by 2027/8 assumed in the Council's MTFP.

2.8 Stockport Active CIC are in the process of developing their business plan for 2025/6, for review by CRMG Scrutiny Committee in March 2025. Being able to move to the agency model by 1<sup>st</sup> April 2025 will mean that projected management fee required from the Council will reduce by £0.700m.

### **3. PROPOSED APPROACH**

3.1 To enable Stockport Active CIC (trading as Life Leisure) to deliver its 2025/26 business plan within the agreed budgetary parameters set by the Council, it is proposed that the management arrangements between the Council and CIC are changed so the CIC is providing services as an agent of the Council. This is a further stage in increasing the integration between the CIC and Council whilst retaining the financial and operational advantages of retaining a distinct entity to operate Council owned/leased leisure centres, deliver active communities programmes and the specialist physical activity service.

3.1.1 In 2023 HMRC revised its treatment of VAT on in-house leisure services which were reclassified from business to non-business following a tribunal case with Chelmsford City Council. This means that by adopting an agency arrangement for leisure provision, any VAT which the service provider cannot currently recover relating to this provision can now be recovered in full.

3.1.2 Stockport Active CIC has partially exempt VAT status which means that they cannot claim all of their VAT relating to expenditure from the HMRC, resulting in higher expenditure. Most of the activities delivered by the CIC (i.e. the income) can be treated as exempt of VAT in order to minimise cost to the end customer. This means that the customer does not have to pay VAT however the result is that there is a severe restriction on the amount of VAT that can be recovered on purchases made by the CIC. This irrecoverable VAT has to be written off in the accounts as an operating cost.

- 3.1.3 Under the current management arrangements with the Council, Stockport Active CIC is unable to recover c£0.700m of VAT each year. This cost contributes to the deficit incurred by the CIC, which is funded by the Council under the management fee.
- 3.1.4 Under revised management arrangements, whereby Stockport Active CIC becomes an agent of the Council, Stockport Active will be able to recover 100% of the VAT on its purchases relating to service delivery as an agent. The deficit currently incurred by the CIC would reduce by the VAT now deemed irrecoverable, and consequently there would be a like for like cost reduction of £0.700m to the Council in terms of reduced management fee (deficit funding) required. This will contribute to the achievement of the nil management fee by 2027/8 assumed in the Council's MTFP.
- 3.1.5 The Council has taken taxation advice (the legal advice privilege which attaches to that advice is not waived by making reference to the existence of that advice in this report) which has indicated that the Council and Stockport Active CIC would be able to utilise HMRC's reclassification of leisure services from business to non-business by the CIC becoming an agent of the Council. There will no negative impact on the Council's VAT recoverability. The model has already been adopted by a number of Local Authorities across the country and is being explored by others in Greater Manchester.
- 3.1.6 The agency delivery model is currently and notably used for school meals contracts but has also always been an option for use in leisure. It is the HMRC change in classification of leisure (from a Council perspective) from business to non-business activities that makes a difference, and therefore brings the opportunity for VAT savings. This means that Local Authorities would no longer have to pay VAT on their leisure income, and at the same time can recover VAT on all their leisure-related costs (both capital and revenue)
- 3.2 Under revised management arrangements Stockport Active CIC would act as disclosed agent on behalf of the Council. The CIC would engage with customers in the Council's name and sales invoices and other documents would bear the Council's name and VAT registration number. All income from leisure activities would be shown as income in the Council's accounts. Stockport Active CIC would no longer show income from customers as the customer contractual relationship would be directly with the Council, administered by the CIC as an agent.
- 3.3 The costs borne by Stockport Active CIC for acting as agent for the Council - ie all current costs of the CIC (staffing and all other overheads) - are still costs of the CIC. All these costs would be borne directly by the CIC but then recharged by the CIC to the Council as the costs of providing the agency service. This recharge of costs would represent the income of the CIC.
- 3.4 All costs that would be recharged to the Council will be standard-rated for VAT. This input VAT (from the Council's perspective) would be fully recoverable by the Council

under the change in classification by HMRC of leisure to non-business.

- 3.5 Stockport Active CIC is likely to end up acting as agent for the majority of the services it currently delivers on behalf of the Council, but there may be a small number of services where it continues to act in its own regard as principal. These are likely to primarily be activities funded by external grants.
- 3.6 Subject to Cabinet approval of the proposed new arrangements, the Council will need to revise the current agreements it has with Stockport Active CIC to explicitly reflect that it is acting as an agent of the Council. These will need to demonstrate that Stockport Council has control of the agent through six tests set by HMRC to judge whether an agency relationship for goods and services exists. Stockport Active CIC will need to revise all agreements with Members and those hiring facilities to reflect that it is now acting as an agent of Stockport Council.
- 3.7 Stockport Active CIC will continue to be responsible for the day to day operation of Council owned/leased leisure centres and the delivery of active communities programmes. Customers will not experience any change in the quality, range and location of services delivered, but their legal, contractual, and GDPR relationship will be with Stockport Council rather than Stockport Active CIC. This change in relationship will be clearly communicated. The process for collection of direct debit payments from customers by Stockport Active CIC will remain unchanged.
- 3.8 Stockport Active CIC will continue to use the trading name Life Leisure. To minimise cost there will be no significant change to branding and signage beyond acknowledgement that the CIC is acting as an agent of the Council.
- 3.9 The Council will set fees and charges for services based on recommendations received from Stockport Active CIC.
- 3.10 The annual report and business plan for the operation of Council-owned leisure centres, delivery of active communities programmes and the specialist physical referral process will continue to be brought through the Scrutiny committee governance process.
- 3.11 The Council already actively monitors the financial performance of Stockport Active CIC as their income and expenditure determine the amount of deficit funding the Council will be required to provide. This monitoring will be enhanced under the new arrangements, given that this will now be Council income.
- 3.12 The target implementation date for the new arrangements is 1<sup>st</sup> April 2025.

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 4.1 The move to the proposed new arrangements with Stockport Active CIC will result in an annual reduction in the cost of operating Council-owned/leased leisure centres and delivery of active communities programmes of approximately £0.700m. This will contribute to the achievement of the nil management fee by 2027/8 assumed in the Council's MTFP. The introduction of the proposed new arrangements are being developed as a key assumption in the CIC's business plan for 2025/6 subject to Scrutiny and Cabinet approval in March. If it is not possible to move to the new arrangements, at least an additional £700k financial support would be required for Stockport Active CIC for 2025/6 and subsequent years.
- 4.2 In the event that operation of leisure centres generate a surplus under the new arrangements, the Council will have the benefit of the full surplus rather than just a Right to Trade payment based on an agreed percentage of the surplus.
- 4.3 There is risk that income from the operation of Council-owned leisure centres and active communities programmes transferring from Stockport Active CIC reduces the commercial incentive of the organisation to improve income and minimise cost. Although Stockport Active CIC will be acting as an agent of the Council under the proposed new arrangements, it is still a wholly owned Council company and the Board consists solely of Council officers so the Board will still be driving financial performance in the interests of the company and the overall interests of the Council as sole shareholder. To further minimise the risk of performance incentive reducing under the new arrangements, the Council client function will enhance its budget monitoring of its leisure centres to be able to quickly take action to address variances from budget.
- 4.4 There is a potential risk that the move to an agency model for leisure could potentially affect the business rate reliefs (NNDR) that Stockport Active CIC qualifies for. This has been investigated and there will be no adverse NNDR implications under the proposed new arrangements.
- 4.5 There is a risk that the Council's existing VAT partial exemption could be adversely impacted by the proposed new arrangements because of the increased income and expenditure sitting with the Council. The Council has tested this with our VAT specialists and they have confirmed that this will not be an issue for Stockport.
- 4.6 There is a risk that HMRC do not accept the substance and reality of the agency model and feel that it is not compliant with their new rules. The Council has tested this with our taxation experts and it is not considered to be a high risk. A number of other local authorities have already moved to this model or are in the process of doing this. There has been no challenge to date, and Stockport would not be at any higher risk of challenge, providing the arrangements comply with the advice given by the experts who have been engaged (such advice being covered by legal advice privilege which is not waived).

4.7 There is a risk that a delay to the timescales for implementing this change to the arrangements reduces the potential financial advantage of the move to an agency model. This is being mitigated by a project management team comprising officers across Council Departments and the CIC.

## **5. LEGAL CONSIDERATIONS**

5.1 The relationship between the Council and Stockport Active CIC is governed by the following arrangements.

- Members Agreement: defines the relationships between Stockport Council and Stockport Active CIC and the agreed business plan of Stockport Active CIC
- Services Agreement: outlines the services that the Council requires Stockport Active CIC to carry out in respect of operational of Council owned/leased leisure centres, the delivery of active communities programmes and the payment by the Council to Stockport Active CIC for service provision
- Leases: The leases specify the basis on which Stockport Active CIC occupy Council-owned/leased premises

5.2 The principal changes that will be required are:

- a) Members Agreement: the agreed business plan will need to reflect the change to an agency model using the process in the Members Agreement to agree such changes;
- b) Services Agreement: will need to be amended to reflect that Stockport Active CIC will in future act in the capacity as the Council's agent; and
- c) Stockport Active CIC customer agreements: these will need to be amended to reflect that customers are entering into agreements with the Council (rather than Stockport Active CIC).

5.3 The key effect from a legal perspective of the model change is that leisure service users will contract with the Council directly rather than with Stockport Active CIC to take out memberships and to book facilities or classes. Stockport Active CIC will be an intermediary which is authorised to conclude those agreements with customers on the Council's behalf, and therefore the Council will have a direct contractual relationship with customers and will assume certain additional responsibilities as a result – for example it will be data controller for personal data provided by customers. In order to capture all of the implications of moving to an agency model, it is proposed to appoint external legal advisers to draft the necessary amendments to the services agreement.

5.4 The current term of the leases and service agreements is until 31<sup>st</sup> March 2027 with the option to renew for a further 2 years. It is proposed not to amend the term of agreements (other than is necessary to put in place an agency relationship) with Stockport Active CIC as this gives us an opportunity to evaluate the new arrangements prior to potentially proposing longer-term renewal of agreements.

5.5 The Council entered into the services agreement with Stockport Active CIC without following a regulated procurement competition on the basis that Stockport Active CIC is controlled by the Council, and such contracts are exempt from procurement regulations. The modification to this contract is therefore also not subject to procurement.

## **6. HUMAN RESOURCES IMPACT**

6.1 As there are no changes proposed to the range, scope and locality of services currently provided in respect of operation of Council-owned leisure centres and delivery of active communities programme, there are no human resources implications of this proposal. Staff involved in these activities will continue to be employed by Stockport Active CIC (trading as Life Leisure). Terms and conditions of staff will remain as at present.

6.2 There will be no additional resource requirements for the changed arrangements as the administration of the new model will be carried out by Stockport Active CIC.

## **7. EQUALITIES IMPACT**

7.1 As there are no changes proposed to the range, scope and locality of services currently provided in respect of operation of Council-owned leisure centres and delivery of active communities programme, there are no equalities impacts of this proposal.

## **8. ENVIRONMENTAL IMPACT**

8.1 As there are no changes proposed to the range, scope and locality of services currently provided in respect of operation of Council-owned leisure centres and delivery of active communities programme, there are no environmental impacts of this proposal.

## **9. CONCLUSIONS AND RECOMMENDATIONS**

9.1 Scrutiny are asked to note the report and provide comments.

9.2 Cabinet are asked to:

9.2.1 Consider these proposals together with any comments arising following scrutiny committee meeting, and if thought fit:

9.2.2 Delegate authority to the Director of Finance and the Assistant Director of Governance, in consultation with the Cabinet Members for Finance & Resources and Communities, Culture and Sport, to take all action necessary to progress to the new arrangements and negotiate and enter into the new contractual documents that will be required to give effect to these proposals from 1<sup>st</sup> April 2025.

## BACKGROUND PAPERS

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Peter Ashworth on 07891 949473 or by email [peter.ashworth@stockport.gov.uk](mailto:peter.ashworth@stockport.gov.uk)