

## Delegated Decision Notice (DDN)

This form is the written record of a key, significant operational or administrative decision taken by an officer.

<b>Decision type</b>	<input type="checkbox"/> Key Decision	<input checked="" type="checkbox"/> Significant Operational Decision	<input type="checkbox"/> Administrative Decision
<b>Approximate value</b>	<input type="checkbox"/> Below £500,000 <input type="checkbox"/> £500,000 to £1,000,000 <input type="checkbox"/> over £1,000,000	<input type="checkbox"/> below £25,000 <input type="checkbox"/> £25,000 to £100,000 <input type="checkbox"/> £100,000 to £500,000 <input checked="" type="checkbox"/> Over £500,000	<input type="checkbox"/> below £25,000 <input type="checkbox"/> £25,000 to £100,000
<b>Director<sup>1</sup></b>	Director City Development		
<b>Contact person:</b>	Area Manager Active Leeds: Helen Trenam Yates	Telephone number: 07712 217284	
<b>Subject<sup>2</sup>:</b>	Settlement Agreement relating to Leisure PFI Projects		
<b>Decision details<sup>3</sup>:</b>	<p>What decision has been taken? (Set out all necessary decisions to be taken by the decision taker including decisions in relation to exempt information, exemption from call-in etc.)</p> <p>The Chief Officer Operations &amp; Active Leeds has:</p> <p>a) Noted the content of this report;</p> <p>b) Noted the terms of the settlement of various disputes relating to performance issues under the Projects;</p> <p>c) Approved entering into:</p> <ul style="list-style-type: none"> <li>• a settlement agreement between Leeds City Council and Environments for Learning Leeds PFI Three Limited in respect of the Armley Leisure Centre and Morley Leisure Centre; and</li> <li>• a settlement agreement between Leeds City Council and Environments for Learning Leeds PFI Four Limited in respect of the Holt Park Wellbeing Centre, (together the “Settlement Agreements”); and</li> </ul> <p>d) Approved entering into all other ancillary documents and taking such other action required to facilitate resolution of the Disputes.</p> <p>A brief statement of the reasons for the decision (Include any significant financial, procurement, legal or equalities implications, having consulted with Finance, PACS, Legal, HR and Equality colleagues as appropriate)</p> <p>This report is to gain approval for the Council to enter into two Settlement</p>		

<sup>1</sup> Give title of Director with delegated responsibility for function to which decision relates.

<sup>2</sup> If the decision is key and has appeared on the list of forthcoming key decisions, the title of the decision should be the same as that used in the list

<sup>3</sup> Simply refer to supporting report where used as these matters have been set out in detail.

Agreements, one with each of the respective providers under the BSF3 Leisure PFI (relating to Armley and Morley Leisure Centres) and the BSF4 Leisure PFI (relating to the Holt Park Well Being Centre) projects (the “**Projects**”).

A sustained period of substandard contractor performance at the leisure facilities under the Projects has resulted in unavailability and service performance issues, and given rise to various disputes between the parties (the **Disputes**). The Settlement Agreements are to be entered into in resolution of the Disputes.

Under the terms of the Settlement Agreements:

- The Council will release £4,414,693.41 excluding VAT of held deductions to the Contractor (the “Settlement Amount”)
- The Council will retain £1,744,443.91 of deductions withheld in respect of the Projects (the “**Settlement Retention**”);
- The Council will allow a moratorium providing the ProjectCos with an opportunity to rectify the issues whilst receiving appropriate relief from their contractual obligations under BSF3 Leisure PFI and BSF4 Leisure PFI in order to facilitate such rectification;
- the ProjectCos will, at their cost, appoint an independent surveyor (the “**Consultant**”) to undertake a survey of the three leisure centres and produce a report identifying the rectification works required to achieve the contract standards;
- the ProjectCos will then have a 14 month period to agree with the Council a rectification programme and undertake the rectification works, following which the moratorium period will end;
- during the moratorium period, the Council will receive c£180k from the ProjectCos to cover resourcing costs of the Council relating to its oversight and monitoring of the rectification.

Brief details of any alternative options considered and rejected by the decision maker at the time of making the decision


1. Do nothing – this option considered not progressing a Settlement Agreement and continue making performance deductions from the ProjectCos should availability or standards not be met. This was discounted on the basis this approach does not address the issues which are impacting on the availability of the asset and user experience and the Council is keen to ensure services are provided as specified. In addition, this would most likely escalate to a formal court or termination claim on the part of the ProjectCos. While the Council is confident of its position in terms of actions taken, the Council would in this

	<p>instance be subject to litigation risk.</p> <p>2. Termination – this option considered pursuing termination of the PFI contract with the ProjectCos. This was discounted on the basis that termination would be complex, lengthy and costly, and may further impact on service provision. This approach would not necessarily resolve the issues and the ProjectCos have demonstrated a willingness to work collaboratively to implement a resolution, which is anticipated to be the most prompt route to rectification.</p>
<b>Affected wards:</b>	Adel & Wharfedale, Armley, Morley South
<b>Details of consultation undertaken<sup>4</sup>:</b>	<p>Executive Member</p> <ul style="list-style-type: none"> <li>• Councillor Salma Arif - Executive Member for Adult Social Care, Public Health and Active Lifestyles.</li> </ul>
	<p>Ward Councillors</p> <ul style="list-style-type: none"> <li>• N/A</li> </ul>
	<p>Chief Digital and Information Officer<sup>5</sup></p> <ul style="list-style-type: none"> <li>• N/A.</li> </ul>
	<p>Chief Asset Management and Regeneration Officer<sup>6</sup></p> <ul style="list-style-type: none"> <li>• N/A.</li> </ul>
	<p>Others</p> <ul style="list-style-type: none"> <li>• The Director City Development has been consulted as part of the proposals</li> <li>• Representatives of Department of Health and Social Care and the Infrastructure and Projects Authority have been consulted throughout in respect of both the underperformance and the settlement proposals.</li> <li>• External advice and support has been received from Integer Advisory Services (technical/contract support) and Weightmans LLP (legal).</li> </ul>
<b>Implementation</b>	<p>Officer accountable, and proposed timescales for implementation</p> <p>The Chief Officer Operations &amp; Active Leeds is responsible for the implementation of the improvement plan. A fourteen month rectification programme with commence following receipt of the final rectification works report to allow for corrective action to be undertaken at which point the facilities management services will be provided as specified in the contract.</p>
<b>List of</b>	Date Added to List:- Not applicable

<sup>4</sup> Include details of any interest disclosed by an elected Member on consultation and the date of any relevant dispensation given.

<sup>5</sup> See Officer Delegation Scheme (Executive Functions) CDIO must be consulted in relation to all matters relating to the Council's use of digital technology

<sup>6</sup> See Officer Delegation Scheme (Executive Functions) CAMRO must be consulted in relation to all matters relating to the Council's land and buildings.

<b>Forthcoming Key Decisions<sup>7</sup></b>	<b>If Special Urgency or General Exception</b> a brief statement of the reason why it is impracticable to delay the decision	
	<b>If Special Urgency</b> Relevant Scrutiny Chair(s) approval Signature _____ Date _____	
<b>Publication of report<sup>8</sup></b>	If not published for 5 clear working days prior to decision being taken the reason why not possible:	
	If published late relevant Executive member's approval Signature _____ Date _____	
<b>Call-in</b>	Is the decision available <sup>9</sup> for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<b>If exempt from call-in</b> , the reason why call-in would prejudice the interests of the council or the public:	
<b>Approval of Decision</b>	Authorised decision maker <sup>10</sup> Jane Walne, Chief Officer Operations and Active Leeds	
	Signature 	Date 28 February 2024

<sup>7</sup> See Executive and Decision Making Procedure Rule 2.4 - 2.6. Complete this section for key decisions only

<sup>8</sup> See Executive and Decision Making Procedure Rule 3.1. Complete this section for key decisions only

<sup>9</sup> See Executive and Decision Making Procedure Rule 5.1. Significant operational decisions taken by officers are never available for call-in. Key decisions are always available for call-in unless they have been exempted from call-in under rule 5.1.3.

<sup>10</sup> Give the post title and name of the officer with appropriate delegated authority to take the decision.