

Name of meeting: Cabinet

Date: 21st November 2017

Title of report:

A Partnership Approach - School Swimming and Kirklees Active Leisure

Purpose of report

To request approval to engage about a potential partnership approach between the LA, Kirklees Active Leisure (KAL) and schools, for school swimming.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes Affects all Wards
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	Yes
The Decision - Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by Director & name	Steve Walker – 10th Nov 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Debbie Hogg (Eamonn Croston) 10th November 2017
Is it also signed off by the Assistant Director - Legal Governance and Monitoring?	Julie Muscroft (Karl Larrad 10th November 2017)
Cabinet member portfolio	Cllr Masood Ahmed Cllr Erin Hill Cllr Graham Turner

Electoral wards affected: All

Ward councillors consulted: None

Public or private: Public

1. Summary

Kirklees Council provides a service for primary schools across the district that enables pupils to have access to swimming and water safety instruction, in line with the Key Stage 2 national curriculum.

To provide this service, the Council already works in partnership with Kirklees Active Leisure (KAL), as their swimming pool facilities enable the delivery, alongside the 3 school pool facilities in the Huddersfield area (Salendine Nook; Almondbury; and North Huddersfield Trust School).

As well as the timetabling and coordination of pool facilities, to meet school needs the Council also;

- employ and manage swimming teachers
- work closely with KAL who support the service to schools by providing swimming instructors
- makes arrangements for the transportation of pupils to swimming pools
- makes arrangements for swimming galas
- provides management and administration of the service.

This report seeks approval to engage about an opportunity to further develop the partnership between the Council, Kirklees Active Leisure and our schools with a view to the organisation and management of school swimming being delivered directly between Kirklees Active Leisure and schools from September 2018 with a TUPE transfer on or around end of July 2018.

2. Information required to take a decision

When looking at our shared outcomes for the district, the Council and its partners want children in Kirklees to have the best start in life and for people in Kirklees to be as well as possible for as long as possible. It is therefore important that we work together with our schools to secure a sustainable, high quality school swimming service.

The government has given a real focus to swimming, recently commissioning Swim England (formerly known as the Amateur Swimming Association (ASA)) to produce a swimming charter to promote the importance of swimming, not just as a life skill but also for all the related inclusion and health benefits.

In July 2017 a report was launched by a group of experts from across education, sport and leisure, who aim to improve swimming and water safety in schools. The report explored the challenges that primary schools face in delivering high quality swimming and water safety lessons.

The report found that almost a third (31 per cent) of Year 6 pupils in England and Wales will finish school without being able to swim and without basic water safety skills. In addition, two-thirds (63 per cent) of parents with Year 6 children fear that their child could not save themselves in water.

Swimming and water safety remains a statutory element of the 2014 National Curriculum. The expectation is for all pupils to achieve a minimum standard of swimming ability and water safety awareness before they finish Key Stage 2.

The opportunity to buy swimming instruction is offered as part of the Partnership Services within Learning and Early Support. Each primary school currently 'buys' this service from their Dedicated Support Grant (DSG) budget

as it is a required part of the National Curriculum (NB Academies do not have to follow the National Curriculum).

The programme of school swimming coordinated by the Council ensures a fair provision of school swimming, with all schools charged the same per pupil, no matter their geographic location/ travel time to their allocated swimming pool.

The Council delivers the service through contracted (directly employed) swimming teachers and KAL swimming instructors. In addition, several contracts/agreements are currently in place to allow the Council to deliver the service, including;

- KAL facility hire agreements
- Individual school agreements (the traded service).
- Transport contract (This is part of a larger contract agreed via the West Yorkshire Combined Authority (WYCA))
- SPIE PFI agreements (Non KAL pool facilities)

Kirklees Council deliver to the national curriculum swimming standards, however, they do not follow the Swim England Learn 2 Swim framework.

Kirklees Council have historically demonstrated a high achievement level of 85%+. Kirklees provides all schools with an individual report and attainment percentage; all assessments and observations are completed internally.

Over recent months, there have been exploratory discussions with a view to assessing, in principal. The potential for the Council to build on the partnership with KAL, and transfer the delivery of school swimming to KAL. This would mean that schools would be able to deal directly with KAL, who would have the capacity and opportunity to build upon, enhance and shape the offer in the future. KAL already operate the pools at which the swimming lessons are provided apart from 3 school pools.

As key partners already working with our schools, KAL see this as a positive opportunity, and, in terms of future delivery, the sustainability and capacity for a swimming service could be best met by KAL who have led in the development of the Kirklees Aquatic Pathway over recent years and have experience and expertise in terms of overall aquatics delivery.

KAL have stated that in addition to the core benefits of transferring the service, a number of further opportunities may well exist, including the opportunity to;

- Review the current delivery to optimise efficiency, in terms of both:
 - Session length; and
 - Product delivered
- Implement longer term Service Level Agreements with each school to provide longer term security/ planning ability for the programme and increased value for money for the schools.
- Develop the wider partnership with schools allowing additional KAL product development and delivery within school sites, linking with the other school activity partners on the Kirklees Active Schools (KAS) strategic board. This would include both the development of a “universal offer” approach to primary schools across Kirklees, with school swimming and

other KAL products being a central part of this, as well as emerging links with the Thriving Kirklees (previously known as the Healthy Child Programme) transformational health programme by the Locala-led partnership.

The increasing pressures on schools own funding is understood by KAL, and it is recognised that there would be the need to continue to manage the future service exceptionally well to ensure that the schools receive excellent value for money and a high quality service. The Council would want to continue to work collaboratively with KAL and our schools to support this partnership approach by supporting any future relationships. From early discussions, KAL have indicated that they would look to include additionality (e.g. discounted school staff membership) in their offer at no additional cost and believe that because of their expertise in the area there is significant potential for the school swimming product to link with other KAL/partner products (e.g. holiday programmes; etc.) for the benefit of local children and young people.

Engagement with schools about this proposal is now key in shaping the future partnership approach, and therefore this report seeks permission for officers and KAL to ascertain the views of our schools about this potential change.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

On their website, in relation to the swimming charter, Swim England explain some of the wider benefits of swimming lessons, including that through competence in water, children will have more fun, will be more likely to be active, follow a healthy lifestyle and participate in sport throughout their lifetime.

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

Putting children at the heart of what we do, and enabling them to have the best start in life is supported by developing the existing partnership that exists between our schools, the council and KAL. By building on this partnership there are opportunities for schools to continue to have access to a high quality and sustainable swimming offer that they can shape in conjunction with KAL for the benefit of their pupils.

3.4 Reducing demand of services

Where children and young people are given the opportunity to be active and follow a healthy lifestyle, this can result in better physical and mental health. Securing and building on existing good practice that is affordable and value for money can enable schools to continue to support swimming at Key Stage 2.

3.5 Other (e.g. Legal/Financial or Human Resources)

Should the proposal move forward, there would be human resources implications for swimming teachers that are currently employed by the

Council. The swimming teachers would transfer under TUPE to KAL, following appropriate consultation. Appendix A sets out in more detail the TUPE process. Kirklees Council HR officers would provide technical advice and support any processes where required.

In addition, arrangements would need to be put in place in a transitional phase in relation to transport and the use of the 3 school swimming pools in Kirklees.

Equalities Impact Assessment

The Equality Act 2010 places the Council under a duty – the Public Sector Equality Duty to have due regard to the need to achieve equality objectives.

An initial Equality Impact Assessment has been carried out which indicates that there are no adverse impacts highlighted. This would be revisited following engagement about the proposals. By building upon the existing partnership between the Council, KAL and our schools, the proposal enhances opportunities to sustain a swimming offer for school age children.

4. Consultees and their opinions

It is proposed that consultation and engagement takes place with schools, staff and other interested parties in the second half of the autumn term through to January 2018, and that the feedback received is used to determine the way forward.

5. Next steps

To invite comments and offer opportunities to engage with schools via discussion at

- Education & Learning Partnership Board (29th November)
- School's Forum (1st December)
- Kirklees Primary Heads (18th January)
- Kirklees Secondary Heads (10th January)

As well as offering an opportunity for staff engagement.

6. Officer recommendations and reasons

6.1 The proposal is in line with an outcome focussed commissioning council. It will offer an opportunity to develop a partnership with schools and KAL to enable KAL, which has capacity to add value, provide an efficient, effective, value for money service using their experience and expertise to deliver council outcomes around giving children the best start in life, to follow active healthy lifestyle and improve on and support achievement of minimum standards at Key Stage 2 of the national curriculum.

6.2 To authorise the Director of Children's Services (or nominee(s)) to commence engagement, in partnership with colleagues from KAL for 8 weeks to 19th January with schools to seek their views about

swimming instruction services being delivered by KAL. As well as council staff who would be affected by the proposal.

6.3 Subject to (i) careful consideration of the outcome of the engagement which would have oversight of in 6.1 above: and (ii) KAL Board of Trustees approval to a TUPE business transfer, to delegate authority to the Director of Children's Services to conclude negotiations and finalise arrangements for the TUPE transfer; and for the Service Director, Legal, Governance and Commissioning to enter into and/seal in the Council's behalf any legal and other documentation necessary to give effect to the arrangements.

7. Cabinet portfolio holder recommendation

We are keen to explore opportunities to develop the partnership with our schools and Kirklees Active Leisure for the benefit of the children in Kirklees. We recognise that school funding is under pressure, and that securing a sustainable service, whilst retaining and developing the swimming offer, is of importance for our schools and their pupils. As part of our new ways of working, the Education and Learning Partnership Board will be well positioned to explore the proposal and, along with other opportunities, to seek the views of schools will be important in determining next steps.

8. Contact officer

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9. Background Papers and History of Decisions

N/A

10. Service Director responsible

Jo-Anne Sanders
Acting Service Director – Learning & Early Support

Appendix A.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("TUPE") and Pensions

- 1.1. TUPE was introduced to meet the obligations under a European Directive to ensure the protection of employee rights when there is a "transfer of an undertaking". A relevant transfer can be either a transfer of an undertaking, business or part of an undertaking or a "service provision change" under Reg. 3(1)(b)(i) involving the outsourcing, retender or insourcing of a service where immediately before the transfer there is an "organised grouping of employees" whose principal purpose is to carry out activities on behalf of the Council and the activity is fundamentally the same and not a single specific event or task of short term duration. The proposed would constitute a "service provision change" under reg. 3(1)(b)(ii) and or a business transfer under reg. 3(1)(a).
- 1.2. In circumstances where TUPE applies, the employees transferred will become employees of the transferee (Kirklees Active Leisure in this case) by virtue of the statutory novation of their employment contracts under TUPE. All existing rights and liabilities in relation to transferring Council employees will transfer to Kirklees Active Leisure. Where TUPE applies it does so by operation of law and the parties cannot contract out of it. The intention is that all affected staff will transfer to Kirklees Active Leisure on or around end of July 2018.
- 1.3. There will be no impact on the position of Council support staff (i.e. Finance, HR, IT etc.).
- 1.4. **The Duty to Inform and Consult**
 - 1.4.1. Where employees are transferred from one employer to another under TUPE, both the transferor and the new transferee employer have duties to inform and potentially consult with Trade Unions in relation to any of their employees, who may be affected by the transfer or by "measures" taken in relation to it. If the employer recognises a trade union, they must consult with that union;
- 1.5. **Duty to Inform**
 - 1.5.1. Employees who might be "affected" by the transfer may include:
 - 1.5.1.1. Individuals transferred from the transferor (Council) to the transferee (Kirklees Active leisure) in this case)

- 1.5.1.2. The transferor Council's employees who do not transfer but whose jobs might be affected by the transfer; and
- 1.5.1.3. The transferee's employees whose jobs might be affected by the transfer.
- 1.5.2. The Council and Kirklees Active Leisure as employers are obliged to inform the Trade Unions in writing of:
 - 1.5.2.1. The fact of the transfer, the date, and the reasons for it;
 - 1.5.2.2. The legal, economic and social implications of the transfer for the affected employees;
 - 1.5.2.3. Whether the employer envisages taking any "measures" (e.g. redundancies or a reorganisation) which will affect the employees and, if so, what measures are envisaged;
 - 1.5.2.4. The number of agency workers working temporarily for and under the supervision and direction of the employer, including the type of work those agency workers are carrying out.
 - 1.5.2.5. Information must be provided in sufficient time to allow for consultation if measures are envisaged and the timescale for this is not prescribed by TUPE.
- 1.6. Long enough before the transfer the Council must disclose whether Kirklees Active Leisure envisages carrying out any "measures" which will affect the employees and, if so, what. Kirklees Active Leisure as transferee employer must give the Council as transferor the necessary information so that the current employer is able to meet this requirement.
- 1.7. "Measures" means, for example, changes to terms and conditions, grading or other structures proposed redundancies. It will include any action, step or arrangement in connection with the transfer. Usually it requires the new employer to have formulated some definite plan or proposal. It is not enough that there should be just some possibility of a change in contemplation.

2. Duty to Consult

- 2.1. Unlike the obligation to inform, the obligation to consult will not arise on every relevant transfer. The transferor Council and the transferee employer (Kirklees Active Leisure) will only have a duty to consult trade unions if either anticipates that it will take "measures" in relation to any of its own affected employees which are connected with the transfer (Reg. 13)

- 2.2. However, there is no obligation on the new employer, prior to the transfer, to consult trade unions of transferring employees about measures which it envisages taking in relation to them. Nor is there any obligation on the transferor to consult them about such measures, as the obligation only arises in relation to measures which an employer envisages taking itself. This is an uncertain position and in practice, either the current or new employer will consult the trade unions/staff on such measures in the interests of good employee relations.
- 2.3. This is where measures are defined only as some definite plan or proposal which you intend to implement as a result of the TUPE transfer. This means that you do not need to consult trade unions and/or elected employee representatives on “measures” which are merely a possibility where there has been no actual or contingent decision to put them into effect, or which have no causal or time connection with the TUPE transfer itself. Put simply, if you are planning changes but you don’t know what they will be, they do not amount to measures.
- 2.4. The consultation must be, “with a view to seeking the agreement” of the trade unions to the measures to be taken. There is no requirement actually to reach an agreement. The employer must give the trade unions the opportunity to make representations about the measures being taken; consider and respond to any representations made and, if any, of these are rejected state the reasons for this.
- 2.5. The HR service in the Council and Kirklees Active Leisure will work together on a timescale for TUPE and the provision of information and consultation with staff/trade unions.
- 2.6. The Council as transferor must provide employee liability information to Kirklees Active Leisure not less than 28 days before the transfer date.

3. Pensions

KAL’s Board of Trustees have not informed the Council at this stage of the details of pension provision and this will be subject to consultation.

