

Date of meeting: 10 March 2025

Title of Report: **Plymouth Active Leisure – introduction of Agency Model**

Lead Member: Councillor Sue Dann (Cabinet Member for Customer Service, Sport, Leisure, HR & OD)

Lead Strategic Director: Prof. Steve Maddern (Director of Public Health)

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Your Reference:

Key Decision: No

Confidentiality: Part I - Official

## Purpose of Report

This report recommends changes to Plymouth City Council's contract with Plymouth Active Leisure (PAL) to introduce an Agency Model approach. The proposed approach is summarised in Section A below, with background and further detail set out in Section B.

## Recommendations and Reasons

That Cabinet agrees:

1. To endorse changes to the Council's current contract with Plymouth Active Leisure Ltd. proposed in this report, enabling the introduction of an Agency Model.
2. To delegate final agreement of a Deed of Variation to the current contract to the Director of Public Health in consultation with the Head of Finance and the Head of Legal Services.
3. To endorse the pricing principles to be applied to set prices for the leisure services the Council will provide from 1<sup>st</sup> April 2025, using Plymouth Active Leisure as its agent, as set out in paragraph 4.4 of this report.
4. To delegate authority to the Director of Public Health to determine and set the final, detailed list of fees and charges for these services in accordance with the principles set out in paragraph 4.4 of this report.

*Reasons: An Agency Model approach will generate savings for Plymouth Active Leisure (PAL) through the recovery of previously irrecoverable VAT. These savings (estimated to be within a range of £150,000 - £250,000 annually) will support the financial sustainability of PAL and, as parent company and client, financial benefits will flow through to PCC over time.*

*Following recent changes in HMRC's VAT guidance for local authority leisure services, many local authorities are introducing similar arrangements for their leisure contracts – we understand that around 40 other councils are pursuing similar changes during the coming year. Having had regard to advice from external legal and tax advisors, risks are considered to be low, and the existing benefits of our current contract with PAL will be maintained.*

*In an Agency Model approach, PCC will assume responsibility for certain services previously provided by PAL. Whilst PAL will continue to deliver these services to customers on behalf of PCC, it will fall to PCC to set prices for its services*

*in line with PCC's procedures and policies relating to fees and charges. Recommendations 3 and 4 above are required to ensure that relevant prices are set for the 2025/26 financial year.*

### **Alternative options considered and rejected.**

The alternative option to not make any changes to our contract with PAL is not considered appropriate, because this would not generate savings which are required in order to secure financial sustainability for PAL, and long-term financial benefits for PCC as parent company.

Another alternative would be to in-source leisure provision and directly recover previously irrecoverable VAT. This option has been rejected because there are benefits of delivering leisure services through a Local Authority Trading Company (LATCo) delivery model, and the financial benefits available as a result of changes to VAT guidance can be realised indirectly through the Agency Model approach, whilst retaining the advantages of the LATCo mode.

This report also asks Cabinet to approve a recommendation to increase charges for certain services that will be provided by PCC using PAL as its agent from 1<sup>st</sup> April 2025. The option of not increasing charges has been considered, but is rejected on the basis that it would not achieve cost recovery and/or may affect the level of income achieved from services.

### **Relevance to the Corporate Plan and/or the Plymouth Plan**

The commissioning of leisure services through the PAL contract supports the implementation of the Plymouth Plan, which commits the city to addressing health inequalities by providing vibrant leisure facilities that promote good health and wellbeing, in particular through the provision of programmes that encourage communities to be physical active.

The Corporate Plan commits the Council to being responsible and to spend money wisely. By putting forward the recommendation for the Council to support the adoption of an Agency Model, we are ensuring that best value is being achieved through the commissioning of leisure services.

### **Implications for the Medium-Term Financial Plan and Resource Implications:**

There are no immediate benefits to current MTFP projections, but in the longer term improvements to PAL's financial sustainability will flow through to PCC as the parent company in the medium to long term. These benefits will be factored into future budget rounds.

There are some minor resource implications arising from legal and specialist advisor fees, which are being absorbed within current budgets.

### **Financial Risks:**

Following recent changes to HMRC's VAT guidance, many Local Authorities across the country are introducing similar arrangements to enable VAT to be reclaimed. The council has engaged specialist legal and tax advisors to ensure our revised contractual arrangements are fully compliant and therefore considers the risk of any potential HMRC challenge to be minimal.

### **Legal Implications**

The Council has taken external legal advice to obtain an expert view of the legal implications arising from the proposed variations.

Plymouth Active Leisure Ltd was established as a teckal entity pursuant to Regulation 12 of the Public Contracts Regulations 2015 (PCR). As such, the Council does not need to consider Regulation 72 of the PCR which governs modifications to contracts during their term.

Section 1 of the Localism Act 2011 gives local authorities a general power of competence (power to do anything that individuals generally may do) subject to certain restrictions. Provided that the

variation to the contract establishes a genuine agency model the Council will not be acting outside of its powers by engaging PAL to act as its agent to provide leisure services.

### Carbon Footprint (Environmental) Implications:

There are no impacts directly arising from this report.

### Other Implications: e.g., Health and Safety, Risk Management, Child Poverty:

The nature of services provided through Plymouth Active Leisure will not change as a result of the recommendations in this report and so there are no other implications.

### Appendices

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 1 of the Local Government Act 1972 by ticking the relevant box.</i>						
		1	2	3	4	5	6	7
A	Executive Summary							
B	Briefing Report							

### Background papers:

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

Title of any background paper(s)	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 1 2A of the Local Government Act 1972 by ticking the relevant box.</i>						
	1	2	3	4	5	6	7

### Sign off:

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Originating Senior Leadership Team member: Steve Maddern (Director of Public Health)											
Please confirm the Strategic Director(s) has agreed the report? Yes											
Date agreed: 25/02/2025											
Cabinet Member approval: Councillor Sue Dann approved via email											
Date approved: 25/02/2025											

## SECTION A: EXECUTIVE SUMMARY

### I. Executive Summary

- I.1. This report recommends that changes are made to Plymouth City Council's contract with Plymouth Active Leisure (PAL) in order to introduce an Agency Model for certain leisure services to the public.
- I.2. Currently, PAL provide a range of leisure services on behalf of Plymouth City Council (PCC) through a service contract; PAL is a company wholly-owned by PCC and provides these services as the 'principal' entity. However, PCC retains considerable control over the nature and cost of the services through the current contract. The contractual changes proposed would mean that PAL will provide certain leisure services as an agent of Plymouth City Council; PCC would become the supplier and PAL's role would be to develop and oversee the provision of services on Plymouth's behalf. This Agency Model approach has been endorsed by HMRC as a compliant approach to clarify VAT treatment following a recent change in national guidance. For PAL, an Agency Model approach would improve the trading position by an estimated £150,000 - £250,000 annually; over time these savings would in turn benefit PCC as the parent company.
- I.3. The changes proposed would not fundamentally change the current LATCo model:
  - Whilst PAL would become an agent for some services, it would retain its status as an independent LATCo providing services to PCC and a range of other customers. There would be no consequential change required to PAL's current governance, nor the shareholding agreement between PAL and PCC.
  - The advantages of the LATCo model would be maintained – PAL would retain its advisory, expert role as PCC's agent for leisure services. The current management model's advantages relating to efficiency, ability to innovate, to secure new income streams and high-quality jobs would be preserved.
- I.4. Many authorities are adopting similar Agency Model approaches to their leisure services contracts in order to enable the recovery of previously irrecoverable VAT. As such, the risks of taking this approach are considered to be low – the main risk is that the arrangement is deemed by HMRC to contravene its guidance and VAT is not recoverable as anticipated. This risk will be mitigated through the use of experienced legal and tax advisors to support PCC in drafting changes to the contract that are compliant. PAL are also obtaining legal advice. Contract changes would be executed through a Deed of Variation, and some operational changes to financial reporting, branding and invoicing procedures would be required to ensure that both PAL and PCC remained compliant with VAT guidance.
- I.5. Subject to Cabinet's approval of the recommendations, council officers are targeting the agreement of an appropriate Deed of Variation by the end of March, to enable the Agency Model to be introduced from 1<sup>st</sup> April 2025 so that the full financial benefits can be achieved in the 2025/26 financial year.

## SECTION B: Briefing report

### 2. Background

- 2.1. Plymouth Active Leisure Limited was created as a Local Authority Trading Company (LATCo) following a decision by Cabinet in August 2021. PAL took over operation of PCC's Leisure facilities from the previous operator in April 2022 and currently operates 4 leisure facilities under contract to PCC. Under the current contract, PAL supplies leisure services to the public (acting as 'principal'); however, PCC retains control over the specification and pricing of services through the service contract. Under the current arrangement, PAL is unable to recover VAT on the cost of supplying certain services – in recent years, this irrecoverable VAT has amounted to between £150,000 and £250,000 per annum. Recent changes to VAT rules resulting from the 'Chelmsford ruling' present an opportunity for PCC and PAL to review the current arrangements. PCC and PAL are proposing to vary the contract to make the management model more VAT-efficient through the introduction of an Agency Model (a model endorsed by HMRC), whereby PAL would act as PCC's agent in the supply of certain leisure services to the public.
- 2.2. PCC's Cabinet opted for the current LATCo model on the basis that, of six management options assessed, it best met the following critical success criteria:
- Ability to optimise VAT concessions (at the time of the transfer) and opportunities to introduce innovations to deliver efficiency savings - over the longer term.
  - Ability to determine and adopt the Council's preferred pricing and programming policy.
  - Ability to secure new income streams including health and wellbeing and to deliver investment plans with good ROI.
  - Ability to secure high quality jobs and work-related training for local people.
  - Ability to change direction and priorities to align to the changing priorities of the Council and the Plymouth community.
- 2.3. PCC and PAL are seeking to introduce an Agency Model in order to support (and not undermine) these objectives. The proposed approach has been developed to maintain the current level of control the council enjoys in the contract, ensuring alignment to changing local priorities, specifically in relation to the promotion of active health and the encouragement of individuals who are not currently active. PCC would maintain a similar level of control over pricing, whilst preserving the current management model's advantages relating to efficiency, ability to innovate, to secure new income streams and high-quality jobs.

### 3. Commercial proposal

- 3.1. The introduction of an Agency Model is proposed to be implemented through a change in legal arrangements, whereby PAL would provide certain services as an agent on behalf of Plymouth City Council. The services that would fall under this agency approach are currently defined as 'VAT exempt', and as such PAL is unable to recover the VAT it incurs on the cost of supplying these services. PCC (rather than PAL) would become the supplier of these services for VAT purposes, and (following changes to recent HMRC guidance), PCC would be able to recover VAT incurred on its associated costs. PAL would retain operational responsibility for the services it provided as agent, and would provide expert advice to PCC on the design and development of services as PCC's appointed agent.
- 3.2. PAL would continue to provide certain services in its own right (as 'principal') – there are a range of non-sporting services and sales of goods / food and beverage where activities are incidental to the core business of leisure provision and where there are no VAT advantages of adopting an agency approach. PAL would also provide grant funded services directly in accordance with the terms of various grants and would become a provider of agent services to

PCC (for which PAL would charge fees to recover its costs). The split between 'agency' and 'principal' services will be clearly defined and set out in contractual agreements.

- 3.3. For services PAL provides on PCC's behalf as its Agent, contractual changes would maintain existing contractual liabilities and insurance requirements. PAL would remain responsible for insuring and managing risks associated with its operation and management of all services provided by PAL, whether as principal or agent. It is currently believed that the introduction of an Agency Model approach will not require any changes to the council's existing lease agreements with PAL.
- 3.4. Commercially, as the parent entity of a wholly-owned LATCo, PCC currently retains the risk / reward of the provision of leisure services through its contract with PAL. The current contract defines how PCC provides core funding to PAL through a management fee, or (in the event that PAL's business activities deliver an excess of income over expenditure) how PCC would receive a share of any surplus as shareholder. This overall commercial position would be retained through the implementation of an Agency Model; PAL would collect income on PCC's behalf for the services it provides as PCC's agent, and this income would be offset against PAL's costs of providing management services with a net subsidy (management fee) or return (surplus share) depending on the profitability of activities. A specific profit-sharing arrangement has been agreed for the services to be provided from new facilities being created at Tinside Lido and again, the current agreed commercial model for these services would be maintained in the proposed contractual changes.
- 3.5. PCC currently exercises some control over the pricing of services through the price capping mechanism in the current contract. However, under the proposed Agency Model, PCC would need to exercise full control over the pricing of services that it supplies to the public using PAL as an agent. Notwithstanding this, the Agency Model arrangement will acknowledge that PAL are appointed as PCC's Agent because of their sector expertise, and price-setting will be undertaken annually following a process of advice and consultation between PCC and PAL. PCC will need to include the relevant services within its standard policies and processes for setting fees and charges, and would retain discretion and control over pricing.
- 3.6. It is important to note that PAL would receive the direct benefit of cost savings associated with the introduction of an Agency Model (as these savings arise through the recovery, by PAL, of previously irrecoverable VAT). For the first three years of its current contract PAL has sustained operating losses, arising from transitional costs and exceptional, unforeseen costs arising from the COVID pandemic and the subsequent energy crisis. The company is developing plans to recover from its current deficit position - as parent company, PCC wishes to support this recovery, whilst ensuring value for money is maintained. Savings arising through the introduction of an Agency Model will be a key factor in supporting the sustainable, cost-effective delivery of a broad range of services to support PCC's wider health and well-being objectives. This report does not propose that PCC would receive any direct, immediate financial benefit through the implementation of an Agency Model and focusses on the legal and operational changes required to introduce the approach. In due course, Cabinet will receive a further report with a broader financial analysis of PAL's medium term financial plans, and the potential consequential implications for PCC's leisure budget over the medium-term.

#### **4. Implementation, pricing & operational changes**

- 4.1. The proposed Agency Model would be implemented through a contractual Deed of Variation, with a target implementation date of 1<sup>st</sup> April 2025. Legal advisors are currently drafting documentation to bring the proposed changes into effect, and Cabinet are asked to authorise the Director of Public Health to finalise, agree and execute the legal documentation.

- 4.2. Following the execution of the Deed of Variation, operational changes would need to be undertaken by PAL and PCC. At the time of writing, work is ongoing to clarify the extent of operational impact, but changes within PAL are likely to include:
- Changes to invoice descriptions and other published material to clarify that certain services are being provided on behalf of Plymouth City Council.
  - Clarifying insurance cover to ensure that PAL's activities as agent are adequately insured, and that Plymouth City Council's liabilities or insurance costs are not increased as a result of the introduction of an Agency Model.
  - Changes to internal accounting and financial returns between PAL and PCC to ensure that VAT records are maintained accurately for both entities, and to ensure that both PCC and PAL are able to recover VAT associated with the supply and management of the agency services. This is likely to involve some reconfiguration of financial systems.
- 4.3. PAL will manage the implementation of the Agency Model, and will be responsible for all costs arising where these fall to PAL in the first instance. Costs will be funded from the savings generated by the additional recovery of VAT. PCC will use existing budgets to absorb the cost of professional advice received and any other ancillary costs relating the introduction of an Agency Model, where these fall to PCC in the first instance.
- 4.4. Cabinet are also asked to support the pricing structure for PCC's services provided through the Agency Model, in line with PCC's fees and charges policy and the principles already endorsed by Cabinet (at its meeting in January) for uplifts to fees and charges for the 2025/26 financial year. The Council has a range of Fees and Charges for discretionary and statutory services it provides. The Fees, Charges and Concessions Policy 2016 states that each financial year charges will generally be increased by the Consumer Price Index (CPI), which will ensure charges keep pace with the cost of providing services. The agreed increase for 2025/26, set by CMT in October 2024 and endorsed by Cabinet in January 2025, is 5% + rounding. Officers are currently reviewing proposed prices, taking into account benchmarking (where relevant) and the need to achieve cost recovery. Subject to these considerations, and a final decision on detailed proposals by the Director of Public Health, the agreed increase of 5% + rounding will be applied to current fees and charges for the relevant leisure services.