

23 March 2023 at 5.00 pm

Council Chamber, Argyle Road, Sevenoaks

Published: 22.03.23



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https://www.youtube.com/channel/UCIT1f_F5OfvTzjZk6Zqn6g

Special Cabinet

Membership:

Chairman, Cllr. Fleming; Vice-Chairman, Cllr. Dickins
Cllrs. McArthur, Dyball, Maskell and Thornton


Agenda


There are no fire drills planned. If the fire alarm is activated, which is a continuous siren with a flashing red light, please leave the building immediately, following the fire exit signs.


REASON FOR URGENCY

This meeting has been called as a matter of urgency, in accordance with Section 100B(4) of the Local Government Act 1972. The Chairman has agreed to accept the urgent matter which had missed the statutory despatch deadline, but has been circulated.

The matter was urgent as the Council needed to agree a way forward with a new leisure operator to ensure protection of its leisure facilities in the District. It had missed the 5 days' notice following the unexpected announcement by Sencio on 17 March 2023 that they were no longer able to meet their financial obligations for March and therefore had appointed an Insolvency Practitioner to act as Administrator. It was understood that Sencio was in terminal insolvency and that an immediate reference to an Extraordinary Meeting of Council was required.

	Pages	Contact
Apologies for Absence		
1. Declarations of interest Any interests not already registered		
2. Response To Sencio Community Leisure Insolvency Position - Sevenoaks District Council Leisure Sites	(Pages 1 - 12)	Sarah Robson Tel: 01732227129
		

 Indicates a Key Decision

 indicates a matter to be referred to Council

Exempt Information:

At the time of preparing this agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public.

If you wish to obtain further factual information on any of the agenda items listed above, please contact the named officer prior to the day of the meeting.

Should you need this agenda or any of the reports in a different format, or have any other queries concerning this agenda or the meeting please contact Democratic Services on 01732 227000 or democratic.services@sevenoaks.gov.uk.

**RESPONSE TO SENCIO COMMUNITY LEISURE INSOLVENCY POSITION -
SEVENOAKS DISTRICT COUNCIL LEISURE SITES**
Special Cabinet – 23 March 2023

Report of: Sarah Robson, Deputy Chief Executive, Chief Officer - People and Places

Status: For Decision

Key Decision: No

Also Considered By: Council – 4 April 2023

Executive Summary: The purpose of this report is to update members on the provision of leisure services in Sevenoaks District following the appointment of an Insolvency Practitioner by Sencio Community Leisure (Sencio) and to agree a way forward for the reopening of leisure facilities in the District.

This report supports the Key Aim of various elements of the Community Plan and the Health and Wellbeing Strategy.

Portfolio Holder: Cllr. Lesley Dyball

Contact Officers: Sarah Robson, Ext. 7129

Recommendation to Cabinet:

- (a) To note the events and progress to date outlined within the report.
- (b) To support a recommendation to Council to approve a budget as set out in Appendix A of up to £1.83 million for:
 - i) expenditure associated with supporting the oversight, maintenance and safety of Council owned leisure facilities, whilst negotiations with the Insolvency Practitioner are finalised.
 - ii) an interim leisure operator to oversee the Council's leisure facilities for a period of two years (or until the procurement of a new operator is completed). Members to delegate Authority to the Chief Officer – People and Places and Chief Officer – Finance and Trading to investigate an interim leisure operator and enter into a contract subject to consultation with the Cabinet Member for People and Places and Cabinet Member for Finance and Investments.

This funding will be borrowed from earmarked reserves in the short-term and will need to be repaid. A solution to repay the reserves will need to be agreed before the conclusion of the 2024/25 budget setting process.

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Reason for recommendation: Access to leisure services plays an essential role in reconnecting with communities, bringing people together through sport and physical activities. Therefore, it is important that the Council urgently agrees a way forward for protecting its leisure facilities in the District.

INTRODUCTION

1. As a leisure management company, Sencio operates as a business with its own board of trustees and management team.
2. Sencio operates a standalone business, in much the same way as David Lloyd Clubs, Everyone Active, PureGym or Virgin Active - it is governed and trades independently and in its own right.
3. Sencio's Board members are representative of the local community and comprise persons with a broad range of skills who are likely to contribute to the company's success. The day to day management, including business and financial planning, is delegated to the Chief Executive of Sencio.
4. As leisure operator, Sencio leased Edenbridge and Sevenoaks Leisure Centres and Lullingstone Park Golf Course from Sevenoaks District Council, as the landlord.
5. Under this arrangement, the Council's influence over Sencio is limited to the lease and funding arrangements it has in place.

6. In March this year, Sencio's management team and its Board members made the difficult decision to appoint an Insolvency Practitioner to act as Administrator as the trust considered itself unable to continue trading. This decision happened as Sencio realised it could no longer meet its financial liabilities obligations for March.
7. As a result of Sencio's decision, the Council finds itself in a position, where its leisure facilities at Edenbridge, Sevenoaks and Lullingstone are without a contracted leisure operator.

BACKGROUND

8. Sevenoaks District Council (the Council) owns three leisure facilities and a golf course, which are operated and maintained under contracted lease agreements as follows:
 - Edenbridge Leisure Centre: Sevenoaks Leisure Limited (operating as Sencio Community Leisure)
 - Sevenoaks Leisure Centre: Sevenoaks Leisure Limited (operating as Sencio Community Leisure)
 - White Oak Leisure Centre: Sports & Leisure Management Ltd (operating as Everyone Active)
 - Lullingstone Park Golf Course: Sevenoaks Leisure Limited (operating as Sencio Community Leisure)

Sports and Leisure Management Limited (trading as Everyone Active)

9. Sports and Leisure Management Limited is a leisure management company that was established in 1987. It is a charitable trust and trades under the name Everyone Active. They were awarded the leisure operator contract for the new White Oak Leisure Centre in early 2022 for the next 15 years (with the option of a 5 year extension at the sole discretion of the Council). Everyone Active is the longest-established leisure operator in the UK.

Sevenoaks Leisure Ltd (trading as Sencio Community Leisure)

10. Sencio Community Leisure is a society under the Co-operative and Community Benefit and Societies Act 2014, registered with the Inland Revenue for exempt charitable status. The organisation was set up to benefit the community as a not-for-profit organisation.
11. Formed on 8 January 2004, Sencio is a leisure management company owned and controlled by its Board members (trustees) and management team. There are leases for each of the Council's facilities covering a term that terminates in 2029. Sencio has operated the Council's leisure facilities at Sevenoaks and Edenbridge Leisure Centres (and the old White Oak Leisure Centre until early 2022), together with Lullingstone Golf Course for nearly 20 years.

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12. The Council was asked to nominate two councillors to sit on Sencio Board of Trustees, in the same way it is asked to sit on the boards of organisations, such as charities, operating in the District. In their roles, they are representative of the local community, with executive decisions being made by the executive management team. Any decisions falling to the Board were made collectively by a majority decision of the trustees.

SUPPORT TO SENCIO

13. In recent years, many councils across the country worked hard to support leisure providers and facilities during the height of the coronavirus crisis, despite the impact the pandemic had on councils own finances and their ability to generate income.
14. In 2020, Sencio requested financial assistance from the Council to minimise the impact of the pandemic. Given the significant risk of insolvency faced by many leisure industry providers at this time, at its meeting of 15 December 2020, Cabinet agreed to provide a rescue package to Sencio on the proviso that the company undertook a root and branch review of its operating, financial and business model.
15. The resulting report undertaken by leisure consultancy firm, Max Associates, was presented to Cabinet on 8 July 2021 (see Background Papers). The report outlined how Sencio intended to future proof its leisure operating model and organisational structure, setting it on course to achieve a trading surplus from 2022 onwards.
16. The report highlighted the £1.4 million of public monies, including over £411,000 from the Council, being invested into the Sencio since 2020. Furthermore, it noted the Council's investment of nearly £250,000 each year as part of the lease arrangement with Sencio. This includes Sencio's annual management fee, subsidy for concessionary memberships and asset maintenance.
17. As recently as 19 January 2023, Sencio presented to the Council's Scrutiny Committee, noting they had weathered the recent economic problems associated with the pandemic and were looking forward to a brighter future.
18. Despite assurances from Sencio's senior managers that the trust was performing well, it would appear Sencio has accumulated significant liabilities in recent months, exacerbated by an insufficient cash flow.
19. As Sencio considered itself unable to continue trading, its Board made the urgent decision to cease trading, appointing Evelyn Partners as Insolvency Practitioner, advising staff, customers and suppliers of their decision on 17 March 2023.

SENCIO AND THE ROLE OF THE INSOLVENCY PRACTITIONER

20. Sencio Community Leisure has appointed an Insolvency Practitioner, Evelyn Partners. The role of the insolvency practitioner is to recover as much of any outstanding debt as possible for each of the creditors. While it is in occupation, the insolvency practitioner also has direct responsibility for the security of each of the leisure venues.
21. Sencio's creditors will be contacted directly by the insolvency practitioner. If it is considered Sencio is no longer a going concern, a liquidator will be appointed by the insolvency practitioner.
22. At the time of the insolvency, Sevenoaks District Council was a creditor of Sencio consisting of the following items totalling £456,098.50:
 - a. Outstanding loan for Sevenoaks Leisure Centre gym extension £449,840.56 (as at 25 December 2022). Loan repayments are made quarterly.
 - b. Sundry debts of £6,257.94.
23. The insolvency practitioner will also look for a sale of the Sencio assets, if any, to either an incoming supplier or to satisfy creditors. It has been suggested that due to the significant scale of the debt and liabilities accumulated by Sencio, the sale of the business is unlikely to be a viable option.
24. Mindful of the significance of leisure and the role it plays in people's lives, and the many clubs and societies that depend on a robust operator being able to open the facilities, the Council will actively engage with the insolvency practitioner appointed by Sencio.
25. As Sencio operates a standalone business, its trade debts (money owed for goods and services) would not transfer to the Council.

IMPLICATIONS OF INSOLVENCY

26. Whilst Sencio are under lease and Evelyn Partners remain in occupation of the facilities, prior to any formal liquidation period, they are responsible for securing the buildings, ensuring minimal requirements, such as health and safety compliance are maintained for leisure assets of this scale and complexity during any period of closure.
27. The Council may consider the purchase of any Sencio assets required for service delivery to ensure any incoming leisure provider is able to swiftly commence service to the community without delay (any benefit to the incoming provider will be addressed within the proposed contract with that provider).
28. The Sencio assets will remain in situ whilst the Council and insolvency

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practitioner carry out the due diligence process on the asset listing and a negotiation on their price is concluded.

INTERIM PROCUREMENT STRATEGY

29. The Council's main focus will be on will ensuring facilities can reopen at the earliest possible opportunity.
30. Traditional routes to procuring a leisure operator are time consuming and expensive. Given the community need and extreme urgency to activate the Council's leisure facilities as soon as practical, it is intended to let a shorter term contract rather than undergo a full procurement process at this time.
31. The Council will work with national leisure consultants, Max Associates, to ensure that any contract offered will represent value for money.
32. Seeking to let a shorter term emergency contract will also provide time for the Council to fully assess the type of leisure service that it would like to support in the future, and to review its facilities.
33. In the next few years, the Council will then seek to procure an operator for the longer term, with a good track record in leisure management.

OPEN BOOK ACCOUNTING

34. The resulting interim operator contract will be on an open book accounting basis. Open book accounting is a procurement method, where contractors are reimbursed based on providing transparent records of the costs they have incurred. However, the trading risk would remain with the Council.
35. The interim leisure operator and the Council would need to agree the mechanics of the open-book approach. However, working on this basis is required to enable the Council to work with an operator in order to reconcile between the forecast and actual trading position each month. The net cost of the service is borne by the Council. Therefore, any deficit or surplus would be apportioned to the Council.
36. The Council will be responsible for monthly utility, asset maintenance and repairs costs. However, there may be opportunities after the first 12 months to transfer to the interim operator's suppliers if they present better value for money, however, this will still come at cost to the Council.
37. In an open book scenario, the interim leisure operator will require an allocation towards their central costs.

Other options Considered and/or rejected

38. The Council has no statutory obligation to provide sport, leisure or recreation, services and facilities. This is unlike many other demand driven legally mandated services, such as planning, housing, licensing and environmental health, which we do have a legal duty to provide. However, we do recognise the importance of having these facilities and what they mean to our communities.
39. The Council could consider a rescue package for Sencio, which was offered in principle. However, due to the unknown scale of liabilities accumulated by Sencio, the trust was unable to quantify what a rescue package would look like, confirming it is unable to trade out of the deficit position it faces.
40. The work undertaken by Max Associates in 2021 and the resulting report has been a helpful tool for supporting a new approach to integrate more successfully, the leisure, health and well-being aspirations of our residents.
41. Different management options were considered within the report. At its meeting on 8 July 2021, Cabinet agreed that the Council should not seek to directly manage its leisure facilities or establish a new leisure trust. However, it agreed that in the event that Sencio ceased to trade in the future, members would delegate Authority to the Chief Officer – People and Places and Chief Officer – Finance and Trading to investigate an interim leisure operator for temporary leisure delivery to the community and enter into a contract subject to consultation with the Cabinet Member for People and Places and Cabinet Member for Finance and Investment. This would allow a full procurement exercise to then be undertaken for a longer term contract.

Key Implications

Financial

The figures and estimates contained within Appendix A are derived from early stage assessments and discussions and are high level, the purpose of which is to provide indicative figures rather than final confirmed figures. The final figures will be reliant on information received from the Insolvency Practitioner appointed by Sencio.

Sevenoaks District Council is a creditor of Sencio to the sum of £456,098.50, including the remaining loan repayments for the Sevenoaks Leisure Centre gym extension, and therefore may have to write off some or all of these debts.

The estimated £1.83 million funding required will be borrowed from earmarked reserves in the short-term and will need to be repaid. A solution to repay the reserves will need to be agreed before the conclusion of the 2024/25 budget setting process.

The impact of an open book trading basis is currently unknown, but has the potential to contribute to paying back any borrowing from earmarked reserves.

The Council is unable to establish further details regarding Sencio's current pension asset or possible deficit. To gain more insight into this, Sencio or the insolvency

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practitioner would need to either provide the information from recent actuarial reports or instruct an enquiry themselves. Any short or long term financial impact of the pension fund on the Council will not be known until this information is obtained and costed as at the time of insolvency.

This is likely to result in additional efficiencies or income being required across council services. A further impact may be that less investment income is obtained as there will be a lower amount to invest.

Legal Implications

Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.

Section 1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation.

Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Section 1 of The Local Government (Contracts) Act 1997 provides that every statutory provision conferring or imposing a function on a local authority confers the powers on the local authority to enter into a contract with another person for the provision or making available of assets or services, or both (whether or not together with goods) for the purposes of, or in connection with, the discharge of the function by the local authority.

For reasons of extreme urgency brought about by events unforeseen by the contracting authority the time limits for the open or restricted procedure cannot be complied with. It is further recommended that the term of the emergency contract be proportionate to the nature of the emergency. It is open for the Council to use regulation 72(1)(d) where a new contractor replaces the one to which the authority originally awarded the contract as a consequence of the initial contractor's insolvency. Awards under this regulation must be on the same contract terms, and the incoming supplier must be able to meet or better the original contractor's qualitative selection.

Any eventual provider of leisure services in the District, will need to consider at the time of operation, whether in all the facts and circumstances surrounding the insolvency of Sencio and the reopening of the services, whether there are any subsisting TUPE Transfer and/or potential redundancy payments liabilities to the previous Sencio staff.

Any arrangement entered into with any new supplier is to be compliant with the rules on state aid that are in force at the time of any contract.

The Council has sought external advice regarding some of the liabilities and implications to the Council in the event Sencio became insolvent. Trowers & Hamlins who were commissioned to undertake an initial assessment of the implications to the Council if Sencio folds, including the future pension costs, TUPE and the transfer of assets such as equipment (which is mostly leased) and membership data. The legal advice included the impact where an administrator is involved and the effect of insolvency on liabilities.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Resource (non-financial)

Consideration has been given to existing staffing resource and additional and/or specialist external resource required to engage with the Insolvency Practitioner and support the transition to an interim leisure operator.

Conclusions

Much of the considerations explored in this report are dependent on how the Insolvency Practitioner reacts to the insolvency situation presented by Sencio.

The duties of the insolvency practitioner are to investigate what prospect there might be for an operator to step in and run the current leisure operation. The Council may have to deal with the administrator for a period of time and any of Sencio's assets may be used to pay debtors. The Council will need to ascertain the implications of the contractual position i.e. identify which assets fall under the ownership of the Council or Sencio.

Ideally, the Council would want to limit the time its centres are closed to avoid existing users joining other centres and the negative health impacts on residents and local communities.

However, it must be acknowledged, that the Council is only the freeholder of the assets, it is not the leisure operator. It is Sencio, as an independent trust, that was contracted as leisure operator and it is their Board of Trustees that has sought to appoint an insolvency practitioner, as it deems itself unable to continue to trade. The Council is duly bound by the timescales of the insolvency practitioner and the work it has been appointed to undertake.

This has clearly been a difficult decision for Sencio to make. They have delivered leisure services in the Sevenoaks District for nearly 20 years, making a significant contribution and playing a central part within the local community. Despite, nearly £1.4 million of public monies, including over £411,000 from the Council, being invested into the trust since 2020, regrettably, given the combination of their escalating financial liabilities and pressures, the Trustees could not see a viable future that would allow them to continue to deliver its objectives to promote health and wellbeing in the District.

The Council has upheld its commitment and support to the significance of leisure and the role it plays in people's lives, notably through its £23 million investment into a

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modern, state of the art, leisure centre at White Oak in Swanley. The centre opened last year and has gone from strength to strength under the guardianship of Everyone Active as leisure operator.

The Council is actively engaging with the insolvency practitioner appointed by Sencio, seeking to negotiate and enable a smooth transition to an interim operator.

Having reviewed the situation regarding getting best value for Sevenoaks District from an interim leisure centre management contract, it is recommended that the Council should proceed with an interim arrangement for at least the next 2 years. This timescale will also ensure that appropriate and adequate preparation is undertaken for the letting of a long term contract.

Appendices

Appendix A – Financial implications

Background Papers

https://www.sevenoaks.gov.uk/news/article/255/council_makes_plans_should_leisure_trust_fold

Sarah Robson
Deputy Chief Executive and
Chief Officer – People and Places

Appendix A

Financial implications

The immediate and interim operator cost are estimated in the region of £1.83m* over a two year period.

This figure is derived from early stage assessments and discussions undertaken by the leisure consultancy, Max Associates. They are high level, providing an indicative figure rather than final confirmed figures. At this stage the costs have not been broken down further, but have identified the areas of spend as follows:

- Temporary closure
- Staffing and contractors
- Utilities
- Compliance
- Repairs and Maintenance
- Plant
- Cleaning
- Materials / equipment
- Security
- Marketing and Communications
- Purchase of assets from Insolvency Practitioner (as required)
- Interim operator (open book trading basis)
- Operational costs not borne by interim operator

**The cost envelope of £1.83m does not include pension and loan liabilities, procurement, consultancy or legal costs. Any final figures will be reliant on information received from the Insolvency Practitioner appointed by Sencio and negotiations with the interim operator.*

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