

EXECUTIVE COMMITTEE – 29 MARCH 2010

LEISURE & COMMUNITY SAFETY POLICY & SCRUTINY COMMITTEE  
– 2 MARCH 2010

PART II - DELEGATED

3a. WILLIAM PENN LEISURE CENTRE REFURBISHMENT – ADJUDICATION  
(DCES)

*This report is NOT FOR PUBLICATION because it deals with information relating to the financial or business affairs of any particular person (including the authority holding that information), and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings (paragraphs 3 and 5 of Schedule 12A).*

1. Summary

1.1 This report makes available to Members the decision of the Adjudicator in the proceedings brought by Gee Construction Ltd. that decision being dated 23rd December 2009. The report of Bird and Bird, the Council's Solicitors is also attached and will assist Members in understanding the technical detail of the decision, where that is required. The report has detailed legal implications on the issue of confidentiality and it is hoped assists Members with the questions that were raised at the last meeting as to which elements of the matter are suitable for Part 1 and which for Part II only.

2. Legal Implications

2.1 The issue of whether a report should be in Part I or Part II is now governed by the Local Government (Access to Information) (Variation) Order 2006. This Statutory Instrument sets out a number of grounds that amend what was Schedule 12A of the Local Government Act 1972 and are the grounds to be relied upon in deciding whether a report is not for publication and therefore inappropriate for inclusion in Part I.

2.2 In the case of William Penn, the relevant grounds for holding that the report should be in Part I or Part II are that the report deals with:

- Information relating to the financial or business affairs of any particular person (including the authority holding that information)
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

2.3 To a large extent, the issues arising out of both of these grounds are intertwined and it is convenient to consider them that way instead of individually.

2.4 There have been problems in relation to this project for some considerable time and a Construction Adjudication was commenced by Gee Construction Ltd against the Council in November 2009. This followed the Council's termination of the contract with Gee in January 2009 and was Gee's right pursuant to the Housing Grants Construction and Regeneration Act 1996 and the Scheme for Construction Contracts. That Adjudication was on very limited grounds and was concluded on 23 December 2009. The Adjudicator's Decision is attached as Appendix A.

2.5 Since this is a very specialised area of law and litigation, the Council engaged outside lawyers to represent it in the proceedings and these same lawyers, Messrs. Bird and Bird, have advised the Council on many aspects of the

problems at WPLC. John Wright of Bird and Bird is a known specialist in the field. On his advice the Council also retained a specialist delay analyst, Dr David Aldridge of Acutus, to respond to Gee's assertion that they were entitled to an extension of time under their contract.

2.6 John Wright's opinion on the Adjudicator's decision is attached as Appendix B. Members will find this self explanatory

2.7 The advice of Bird and Bird is without doubt of a confidential nature and subject to legal professional privilege, concerning as it does the Council's position, prospects and proposed tactics, not just in the defence of the Gee Adjudication, but in relation to claims or potential claims against other parties, most notably W S Atkins, the Contract Administrator engaged by the Council from the outset of the works. It also concerns the matter of future Adjudication proceedings. Should the question of a claim or potential claim against Atkins be in the public domain, there is plainly the possibility that Atkins would withdraw from the role of Contract Administrator, as it would face a conflict of interest and the proper approach would be for it to pass the matter to its professional indemnity insurers. This is clearly not a desirable position for the Council to be in at this stage of the project.

### 3. **Equal Opportunities Implications**

#### 3.1 **Relevance Test**

Has a relevance test been completed for Equality Impact?	No
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A relevance test is not appropriate for this recommendation

### 4. **Risk Management and Health & Safety Implications**

4.1 None specific to this report. See Part I report for summary of project risks.

### 5. **Recommendations**

5.1 That the Leisure and Community Safety Policy and Scrutiny Committee recommends to the Executive Committee that this report is noted.

5.2 That public access to the report be denied until the issue is resolved.

5.3 That public access to the report's recommendations be immediate.

Report prepared by: Patrick Martin  
Leisure Performance and Contracts Manager

### **Background Papers**

None

***The recommendations contained in this report DO NOT constitute a KEY DECISION.***

### **APPENDICES / ATTACHMENTS**

Appendix A Adjudicator's decision  
Appendix B Advice from Bird & Bird concerning the adjudicator's decision.