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*nalgao*

**February 2010**

# Outside In:

The benefits and issues involved  
in contracting out local authority  
arts services

**Commissioned by nalgao**

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The logo for Arts Council England is a circular emblem. The words "ARTS COUNCIL" are arranged in a semi-circle along the top inner edge, and "ENGLAND" is arranged along the bottom inner edge. The text is in a bold, sans-serif font.

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DJ Workshop, Cambridgeshire AdEC



Visual Arts workshop, Cambridgeshire AdEC

## **i) Outside In: Introduction and Background**

This report was commissioned by nalgao from Cultural Futures (Paul Kelly) and The Complete Works (Rick Bond) to examine alternative arrangements for managing local authority arts services. The consultants were also asked to look at the opportunities offered by the strategic commissioning of statutory service nalgao's commission emerged from breakout sessions at the October 2009 annual conference looking at how local authority arts services are delivered and alternative delivery methods. The nalgao Executive believed that there was a very valuable opportunity, in challenging times, to examine in some detail whether there were alternatives to the status quo and if so what those alternatives might be and what lessons could be learned from those authorities which had found new ways of delivering traditional leisure and cultural services.

## **ii) The purpose of this report**

nalgao's commission and the consultants' report both acknowledge that if external commissioning is an option, local authority arts officers may not themselves have the influence, and are unlikely to have the authority, to initiate or manage a contracting out process. Instead, this report is aimed at giving local authority arts officers a detailed understanding of the opportunities and issues so that if they find themselves in discussion on this matter or part of a contracting out process, they have the necessary knowledge to contribute and they are aware of the opportunities and pitfalls in the process. Ultimately, the aim of this report is to help local authority arts officers protect their jobs, services and investments.

## **iii) Report structure**

This report is structured into four sections as follows:

### **Section 1: Life on the outside**

An exploration of benefits and issues from interviews with arts officers working within a contracted out environment.

### **Section 2: Strategic commissioning**

An explanation of what this is and the opportunities it offers.

### **Section 3: Getting to the outside**

Technical and legal issues that leisure and cultural management teams need to consider when approaching contracting out.

### **Section 4: Technical checklists and appendices**

## **iv) Why 'Outside In'?**

Historically, local authorities have provided a wide range of services from 'the centre' to neighbourhoods and communities. Contracting out such services is becoming increasingly common. Such services sit outside the local authority but deliver in to the community and to the local authority itself. Hence the title of our report, 'Outside In'. The title of this report has no connection to the West Sussex arts organisation of the same name and any shared aspirations are co-incidental.

## **v) Methodology**

### **Section 1: Life on the outside**

The consultants and nalgao identified a number of local authority arts services now in some form of Trust. The consultants devised a set of questions and interviewed nine organisations. The questions formed the basis of the answers but additional valuable information was gleaned in the course of conversation. The consultants have anonymised the responses to maintain confidentiality.

### **Section 2: - Strategic Commissioning**

This is a much more recent development with limited material available. The consultants discussed the issue with I&DeA, read some prevailing literature on the subject and interviewed one local authority arts officer who has experience of this. More research is probably needed in this area.

### **Sections 3 and 4: Getting to the outside**

The consultants were able to call on a significant body of research, past consultancy work, and technical knowledge.

Cultural Futures focussed on sections 1 and 2. The Complete Works focussed on section 3. Cultural Futures then co-ordinated and edited the material into this report.

The consultants were not specifically asked to produce conclusions and recommendations. However inevitably a number of facts and observations emerged from the research and these are summarised in an Executive Summary that follows.

## vi) **Research Limitations**

The time available to research and prepare this report has necessarily been brief. The consultants have covered as much territory as they can within the time available but it is possible that there are examples of good practice and issues that they have not been able to uncover in the time available.

## vii) **Acknowledgements**

The consultants are grateful to nalgao's administrator Pete Bryan for support and advice, to Martyn Allison of I&DeA and to those interviewed for time given and experiences shared. A list of interviewees is given in Appendix 1.

In compiling this report the consultants have sought to accurately reflect the views given by those consulted and experiences of other contracting out processes. The inferences and conclusions drawn from the body of research data are those of the consultants and if they contain errors or omissions then we bear the responsibility for those.

This report is a guide to a complex process. The consultants stress that any officers or authorities considering contracting out should take additional legal and financial advice. The consultants cannot be responsible for authorities and individuals proceeding without proper legal and financial advice.

**Paul Kelly**  
Cultural Futures

**Rick Bond**  
The Complete Works



Circles, York Photo: Kippa Matthews

# Executive Summary

- 1.** The reasons that local authorities contract out leisure/culture services are generally to save costs and protect existing services.
  - 2.** There are at least five alternative models to the status quo of in house local authority managed and delivered leisure/cultural services.
  - 3.** The alternatives include:
    - a) Partially contracted out service
    - b) Fully contracted out service
    - c) External management contract
    - d) Shared service model – informal or formal
    - e) Independent voluntary trust
  - 4.** The proportion of local authorities contracting out their leisure or culture services is comparatively small.
  - 5.** A significant majority of the local authorities that were studied have contracted out leisure/cultural services through an independent leisure or culture trust. This is usually a company limited by guarantee with charitable status and often with a separate trading company.
  - 6.** This is also the most complex and time consuming model to use.
  - 7.** The benefits of contracting out leisure/cultural services fall into three areas, financial, operational and developmental.
  - 8.** Specific financial benefits in contracting out leisure/cultural services in this way include:
    - Service efficiencies
    - Financial savings through council tax relief and/or VAT savings
    - The ability to raise external finance
    - Greater flexibility in employing and/or contracting staff
  - 9.** Operational and developmental benefits include the ability to look at improvements to poor building stock or developing new buildings and developing new services or bidding for and winning contracts from other local authorities or agencies.
  - 10.** Independent trusts also said they were able to benefit from a wider range of expertise at Board level.
  - 11.** The length of contracts that the trusts reviewed had with their sponsoring authority varied widely from 5 to 29 years.
  - 12.** Whilst most recent trusts manage a wide range of leisure/cultural services, it may be possible to establish a trust that just deals with the arts and arts development. The report examined two of these.
  - 13.** Evidence suggests that these are most appropriate in rural areas where District Councils lack the scale to easily carry a full service arts function.
  - 14.** Trust status had created arts service growth in over 75% of the trusts that were interviewed.
  - 15.** Over 50% of the bodies interviewed said that the arts service would not exist or would be at risk if it had not been externalised.
  - 16.** Over 75% of bodies interviewed said that externalising the service had changed their way of thinking and working.
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- 17.** Two thirds of the bodies interviewed said that externalising the service had changed it for the better.
- 18.** Two important disadvantages regarding Trust status emerged from the research; firstly trust status does not guarantee security from restructuring or service cuts. Secondly, independent trusts often carry a lower level of backroom staff thus giving officers an increased administrative burden.
- 19.** Independent leisure/culture trusts require a retention of strong working relationships with local authorities at officer and/or Member level. Many trusts described the relationship as being 'better' than when the authority ran the service.
- 20.** Trusts just providing arts development services spoke of the importance of partnership working and the value of having a strategic advisory role as well as an operational role.
- 21.** The trust model is by no means the only model of delivering arts services in a different way. A small number of local authorities have joined together to provide arts services. These can be informal arrangements with a joint strategy and separate delivery, or formal arrangements with one staff team serving both authorities. There is far less evidence of these type of arrangements, though they may become more common in future.
- 22.** Joining together the arts services of one or more local authority arts services can be a practical measure, acknowledging that creative work does not need to be hidebound by local authority boundaries.
- 23.** A shared service model can also allow a wider staff skill base by sharing the cost and expertise across a wider geographical area than would be sustainable in one local authority area.
- 24.** This model could also be seen as a first step to independent arts trust status.
- 25.** In several cases local authorities have externalised the management of leisure and cultural services through a contract with a private commercial company. Whilst several authorities have chosen this route, they all appear to have chosen the same company and as a result the commercial options appear 'limited'.
- 26.** Strategic commissioning is one of a number of ways of procuring a range of local authority front line services.
- 27.** Local authority children's services, adult social care services and the youth justice system spend hundreds of millions of pounds of public funding each year providing services to their client groups.
- 28.** Commissioning opens the door to other services or groups bidding for this work, so long as they can demonstrate the required expertise and ability to deliver outcomes.
- 29.** ID&eA believe that if the cultural sector were to access just 0.5% of the health, social care and children's services budgets through commissioning it would increase cultural budgets in councils by 45%.
- 30.** The research suggests that success in the commissioning process depends on five factors, including the ability of an arts service to be part of the discussions when strategic issues are being discussed and its ability to demonstrate the value of its role in commissioning and brokering.
- 31.** Strategic commissioning could bring more money to the arts, and particularly to artists and arts organisations. But evidence to date suggests that the role of the local authority arts service is that of broker and that they will not necessarily earn income from commissioning. Thus strategic commissioning on its own may not protect an arts service.

## **Section 1**

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# **Life on The Outside**

## 1.0 Outside In: Introduction

**This report was commissioned by nalgaoo from Cultural Futures (Paul Kelly) and The Complete Works (Rick Bond) to examine alternative arrangements for managing local authority arts services. The consultants were also asked to look at the opportunities offered by the strategic commissioning of statutory service.**

### 1.1 The context

nalgaoo's commission emerged from a growing concern amongst its members of anticipated potentially very damaging cuts to local authority arts staffing and budgets and two breakout sessions on this subject at nalgaoo's October 2009 annual conference which started to identify alternative models of operation. nalgaoo's Executive felt this issue and the opportunities needed urgent further research.

This research also responds to a broader context that dates back to the early 1990s. Local authorities have continually sought to provide and improve facilities for their local population. However they have periodically faced financial restrictions imposed by central government, such as 'rate capping' or 'council tax capping', compulsory competitive tendering (CCT) with a requirement to put council-run services out to tender and 'Best Value', a more sophisticated version of CCT. At the same time pressure on council budgets, particularly through rising social care costs, have forced them to rethink how they can sustain services but in a more cost-effective manner. The Audit Commission inspections that started in 2000 have revived discussions about this. Part of the challenge facing councils is a need for them to reduce direct costs and part is about finding better a better way of both protecting and delivering services.

As cultural services are mostly non-statutory, this aspect of service delivery can be vulnerable to salami-sliced cuts or worse. This has led a small but growing number of Councils to consider alternative means of delivering cultural services. The majority that the consultants have been able to identify in the time available to them have been the 'leisure trust model'. These are probably the most complex to set up but the easiest to identify. However they are by no means the only model and section 1.5 identifies a range of alternative service options.

### 1.2 Life on The Outside: Alternative Service Delivery Options

#### The historic status quo

The majority of local authorities that deliver leisure/cultural services<sup>1</sup>, do so using an 'in-house' service model comprising a mix of staff, facilities and budgets. In some cases they deliver cultural services and projects directly. In other cases they financially support others to deliver cultural projects. Often they do a mix of both.

The consultants have identified the following possible alternative delivery options to the historic status quo.

#### a) Partially contracted out service

This is often a starting point when, for example, a local authority contracts out one aspect of its cultural provision to an independent management. For example, contracting out a local authority theatre to a commercial management.

#### b) Fully contracted out service

This model involves the local authority transferring all, or the majority of, its leisure/cultural services including facility management. The common method is to transfer them to a leisure trust. This model is explained in considerable detail further on in this report.

#### c) External management contract

This is a variant on b) but rather than transfer the service to a new independent body, an external management – often a commercial company – is given a management contract to run the services and facilities for and on behalf of the local authority.

#### d) Shared service model – informal or formal

This involves two or more local authorities jointly running or managing one or more cultural services. Shared service can be delivered in two ways, through:

- i) An 'informal' dimension in which the two services are independent but there is joint working and some sort of partnership framework or agreement.



**Luton Carnival** Luton Cultural Services Trust

ii) A 'formal' dimension in which there is a single service, serving two or more different local authorities.

The advantage of this arrangement is that it can be service specific – ie just an arts or museum service rather than all leisure/cultural services. It is also likely to be a lot quicker and cheaper to establish than a full leisure trust model. It is also likely to suit smaller District authorities with comparatively low populations well.

#### **e) Independent voluntary trust**

This is usually a service specific model ie just arts or museums. It has similarities to both a partially or fully contracted out service. The main difference might be that it revolves around managing and delivering services and projects rather than around a building. An example would be an arts trust delivering arts development projects for one or more local authorities. This model is discussed in more detail in this report.

### **1.3 Other models**

It is possible there are other models that are yet to be uncovered. The common factor in these is that they are all ways of local authorities externalising arts and leisure or cultural services to independent bodies with the purpose of protecting the service and/or achieving financial efficiencies and development opportunities both for the authority and the leisure/cultural service.

### **1.4 Who was consulted**

The consultants interviewed the arts or cultural officers of nine different contracted out services. In most cases the interviews were done by telephone. The same twelve questions were asked of all organisations. The questions are attached as Appendix 2.

The organisations interviewed ranged considerably in size, date of establishment and location. The following table summarises the details as follows:

Organisation	Structure	Type of authority	Area	Staff	Annual Turnover	Date Started
Leisure Connection	Private Sector	District Council	East Midlands	267	£2.2 million	2003
Leisure Connection	Private Sector	District Council	Eastern	c. 500	Not known	1991
Link4Life	Limited Company with Charitable Status	Unitary Authority	North West	400-500	Not known	2007
Wigan Culture and Leisure Trust	Limited Company with Charitable Status	Unitary Authority	North West	600 fte <sup>2</sup>	£31 million	2003
East Northamptonshire	Limited Company with Charitable Status	District	East Midlands	160	£2 million	2003
Pendle Leisure Trust	Industrial and Provident Society with exempt Charitable Status	District	North West	250	£4 million	2000
Active Luton Trust	Limited Company with Charitable Status	Unitary	South East	150 fte	£8.8 million	2008
Greenwich Leisure Limited	Industrial and Provident Society	Unitary	London	1,500 fte	N/a	1993
AdEC	Limited Company with Charitable Status	District	East	7 ft & 9 p/t	£350,000	1994
Eden Arts	Trust <sup>3</sup>	District	North West	2.8	£110,000	1990

In addition, the consultants looked at the websites of the surveyed organisations and gained some information from those.

## 1.5 External delivery models

The organisations surveyed fall into three distinct types;

- **Model 1**

Independent organisations delivering solely arts services in one or more local authority areas.

- **Model 2**

Leisure trusts delivering a wide range of cultural services in one or more local authority areas.

- **Model 3**

A commercial company delivering a range of leisure services to a local authority specification and contract.

In addition the consultants have been in contact with two adjacent local authorities who currently have a joint arts plan and who have had some initial discussions about a closer and more formal arrangement which could even lead to merging the two services. A development of this sort could become a fourth delivery model.

### 1.5.1 Model 1 - Independent Arts Trusts

This model dates from the early 1990s and seems to be the result of the then Regional Arts Association/Boards' desire to encourage local authority arts provision. In each of the two cases surveyed, local authorities in adjacent areas to the Independent Arts Trusts (IATs) employed arts officers and delivered the services 'in house'. For reasons that are possibly down to geography, limited cultural infrastructure, and other factors that are probably now lost in the mists of time, in the areas without local authority arts provision, an IAT was preferred to local authority provision. Model 1 seems to have quite a lot in common with a Regularly Funded Organisation (RFO) that is a multi-arts 'agency'. The difference is that the IAT's main source of income is the local authority and it is delivering to a predominantly local authority brief.

### 1.5.2 Model 2 – Leisure and Culture Trusts

Leisure Trusts started to be set up in the early 1990s but most of those surveyed date from 2000. They represent a way of both trying to protect all services and creating an environment in which physical, human and financial resources can be better managed offering better value both to the local authority and most

<sup>2</sup> Fte = full time employed equivalent. The total number employed may be higher because of part time jobs

<sup>3</sup> This is the old fashioned type of Trust without company status or limited liability

importantly, the customer. The means of achieving this are detailed further on. The Leisure Trusts themselves differ in some details. Nearly all are companies limited by guarantee with charitable status, often with a separate but linked trading company.

The nature of the services varies quite a lot. Many leisure trusts have buildings at their core – especially leisure and sports centres. Some trusts are ‘full service trusts’ containing all the services and facilities you might find in a local authority leisure or culture department. However there are examples where sports are not included within the trust. As the language has shifted from leisure to culture, so examples are emerging of trusts being established to serve culture with a slightly different emphasis. Libraries and museums are included in some trusts but not in others.

The mix of services included in the trust are doubtless the product of local political, operational and infrastructure considerations. The consultants have not chosen to probe the mix of services covered by particular trusts but instead to focus on the benefits and operational issues. However Appendix 3 carries a table showing the mix of service each trust offers.

All the trusts surveyed include some element of the arts and most trusts surveyed included an arts service equivalent to an in house local authority arts service. This aspect will be examined in more detail further on.

However the largest and oldest of the trusts studied, Greenwich Leisure Limited (GLL), has the least involvement in the arts, with only the management of an arts training initiative within its portfolio. The arts service for Greenwich remained with Greenwich Borough Council. As a result the research into GLL was considerably less detailed than for other trusts. However it is worth pointing out that GLL appears to have been the most expansive of all the trusts and it now manages 65 leisure facilities for twelve other London Boroughs and for two other local authorities outside London. This accounts for its significantly greater size.

### 1.5.3 Model 3 – The commercial company option

This survey studied only one model of a commercial company managing leisure and cultural services for a local authority – Leisure Connection. It could be that other examples exist, it could be that Leisure Connection (LC) is unique in this respect.

The key difference between the commercial Leisure Connections operation and trust models lies in company ownership and profit distribution. With the leisure trust model company ownership is likely to be local as the company directors will probably be local – though obviously board expertise can be sought from wherever the company thinks fit. As the leisure trust models are chiefly charitable, profits cannot be paid to individuals but can either be retained in the trading company (if there is one) as reserves or passed back to the charity. A private commercial company can of course distribute profits to its shareholders or staff as it sees fit.

Private sector companies can, of course, invest new private capital in buildings and associated services. The consultants have not probed this aspect as the nature of this study is about the protection of arts services rather than about capital development.

However the consultants were told that private companies could not directly raise funds from charitable trusts and to tap this source, such private companies had to work with and through partners – not unlike local authority arts officers.

The private sector model can clearly work differently in different places. One of the two LC management contracts involves a Leisure Trust, but the other does not.

In one of the LC contracts, the arts had been a late addition. The contract had started in 1991, but the arts had not been added till 2005. There had been some debate within the local authority prior to this contract about what services to include. No one had considered including the arts in the contract until it was quite well established. The arts have flourished since they were added with an extra 1.5 posts being added to the arts team plus an externally funded part-time project officer.

However the council (a District) does retain some involvement in the arts. The small grants budget remains with the council, although the commercial contractor does the grants assessment.

Whilst this survey has only identified one commercial company operating leisure and cultural services, it is worth pointing out a parallel trend in contracting out arts buildings. Between the 1960s and the 1990s quite a number of local authorities owned and ran arts and cultural buildings, particularly theatres and museums. Some still own and run such facilities.

There was a trend over this period of time to contract these cultural buildings out either as independent stand-alone entities or to commercial management. There are now two leading commercial theatre companies running regional theatres, some of which are run under contract from local authorities.

This issue did not form part of the brief for this project, yet some of the issues are probably germane to the analysis. If there is only one commercial company in England operating a contracted out leisure and cultural service and other examples are sought, then the theatre sector may provide a comparable area of study. This however would require further research.

#### **1.5.4 The Joint Arts Plan Model**

Two adjacent local authorities, both unitary councils, have a joint arts plan (JAP). The plan is an articulation of how the two authorities will work together to ensure that the arts are connected across their areas. Neither audiences nor artists recognise barriers between the two authority areas in terms of the art they engage with or the inspiration they take. It is the job of the Joint Arts Plan to reflect that in terms of policy and administration, removing barriers, making resources go further and enabling the towns to mutually support one another. The senior arts officers from each council work together closely.

The JAP, is a comparatively short document, has a number of aims and identifies specific actions that will achieve these. The JAP feeds into the community plans, cultural strategies, community learning business plan and arts, libraries and museum business plan of the respective authorities. The plan is currently in the process of being rewritten.

The two authorities concerned have had preliminary discussions about merging the cultural service teams of both authorities into a single service team. Officers the consultants spoke to said that whilst some discussions had been undertaken they were at a very early stage and if the discussions were pursued, a service merger could take two years or more to come to fruition.

### **1.6 Reasons for and benefits of contracting out**

The reasons for contracting out and the benefits brought about by it are quite similar. They can be very simply categorised as, strategic, financial, operational and developmental.

#### **1.6.1 Strategic reasons**

Several trusts who were consulted said the purpose was to protect the service from budget cuts or worse. One was explicit. The threat of rate capping and budget and service loss in the early 1990s led it to put its leisure facilities into a separately controlled trust.

#### **1.6.2 Financial reasons**

Aside from protecting the service trusts cited several financial reasons for externalising services. These included:

- Saving NNDR (rates) on buildings through charitable status
- Making VAT and other efficiencies (a £200k VAT saving was cited by one trust)
- The ability to raise external finance and make grant applications for capital investment and revenue costs
- Although not specifically cited, the ability to win external contracts (see below)

#### **1.6.3 Operational reasons**

Two issues emerged here which combine closely with the financial reasons above. The first, cited by several trusts was the ability to 'take control of one's own destiny' and 'act more freely and widely'. It was clear from discussions that trusts could act more quickly in responding to opportunities, needs or circumstances and the consultants were told more than once that independent trusts created a different management culture that positively benefitted the service and its customers.

The second issue is that several trusts which were consulted had either 'a legacy of poor buildings' or insufficient leisure/cultural buildings. Independent trusts were able to raise external finance from private, public or charitable sources to address this in a way that local authorities could not. This directly addressed operational needs and issues.

### 1.6.4 Developmental reasons

In addition an independent trust was not necessarily tied to its 'home territory'<sup>4</sup>. The clearest example of this is Greenwich Leisure Limited which expanded well beyond the Borough. Another trust had taken on the tree management service of an authority 20 miles away and the management of leisure centres in an authority nearly 80 miles away.

Of independent arts trusts we spoke to, one had developed contracts for service outside of its 'home territory' and the other was being encouraged by Arts Council England to look at this.

If taken to its logical conclusion this opportunity could lead to leisure trusts bidding against each other for contracts. But we are a long way from that at the moment. Clearly the opportunity for trusts to gain additional work close to 'home territory' or further afield enables them to spread contract risk in uncertain times.

### 1.6.5 Other reasons and benefits

Several other reasons were cited for contracting out. In one case it was part of a wider externalisation agenda. Two trusts were the outcome of best value reviews and one organisation said service externalisation had been encouraged by the Audit Commission following a best value review.

One trust the consultants spoke to said that creating the trust enabled them to keep packages of cultural services under one roof and said that critical mass and size was beneficial in maintaining good quality services.

However the consultants found evidence that the smaller independent arts trusts were not only surviving but developing and the issue is perhaps not always one of size but the capacity for management flexibility and innovation. One independent arts trust pointed to the importance of volunteers in service delivery - they numbered volunteers in the hundreds<sup>5</sup>. They implied that a statutory body might find it hard to have the ability or flexibility to manage volunteers in the way an independent body could and that this was a vital resource without which the cultural offer would be diminished.

## 1.7 The position of the arts in contracted out leisure trusts

The consultants asked the trusts three specific questions about the arts:

- Whether the arts service within their contracted out service had grown, remained the same or shrunk
- Whether there would be an arts service if the overall leisure/cultural service had remained with the local authority and
- Had the arts service changed as a result of contracting out

In case the purpose of these questions is not explicit, there is no point in local authority arts officers investing time in examining or contributing to a contracting out process if evidence to date shows that arts services within trusts are contracting or changing for the worse.

### 1.7.1 Service Growth

Over 75% of the nine trusts the consultants talked to said that the arts service had grown since trust status, although one organisation said the growth had been small. One trust said the service was about the same size, though the respondent was relatively recent in post. One trust did not respond to this question.



**Dancing in East Northants**  
Cultural Community Partnerships, East Northamptonshire

<sup>4</sup> 'Home territory' is the local authority from which the trust derives its prime service contract.

<sup>5</sup> In a very rural area.

### 1.7.2 Arts service survival

The consultants asked trusts whether they thought an arts service would exist within the local authority had the service not been contracted out. One third said it would not exist and a further 22% said that it would be under threat. So, over 50% of the trusts consulted were doubtful that an arts service would exist without trust status.

### 1.7.3 Change in ways of working

75% of the trusts consulted said that their ways of working had changed. Only one said it had not changed. It was not possible to gauge this in a quarter of the trusts surveyed. Two thirds of the trusts consulted said that externalising their service had changed it for the better.

The changes were described in both general and specific terms. Two trusts spoke of a 'switch in mindset' and a 'cultural change in the way we approach things' which included being, 'more businesslike' and 'thinking as a social enterprise'.

More specific changes included:

- Marketing – services have more freedom and flexibility and how they market themselves with a sharper market focus and edge
- Planning and business development – the ability to develop a medium term financial plan and seek and bid for new business opportunities
- Self direction - with fewer imposed hoops to jump through
- Geography - freedom to act beyond local authority boundaries
- Pricing and staff – the freedom and flexibility to set pricing and to employ staff
- Delivering more activities



Clockwise from top left: Luton Carnival; Luton: Offstage choices - a schools programme for high schools; Swirl Group, Luton.  
Luton Cultural Services Trust

For one trust the change had led to a focus around improvement. One of the independent arts trusts said that their expansion had been the result of their becoming more knowledgeable about how local authorities operate and more customer responsive.

But one trust emphasised that whilst they were independent their contract still depended on meeting local authority corporate priorities. This may well also apply more widely and generally – see para 1.11 below.

#### 1.7.4 The benefits to the arts of trust status

Over 60% of the trusts consulted identified benefits to the arts in being part of an independent trust. In general the benefits were about management flexibility and the ability to bid for external funding.

Some of the specific benefits are outlined in the changes section above. Other benefits include:

- The ability to take on temporary staff when required
- The ability and flexibility to develop additional projects and engage with more people, especially young people
- The ability to take on hundreds of volunteers
- The ability to act quicker and be more responsive
- The ability to carry forward reserves from one year into the next
- Wider expertise on the trust Board of management

#### 1.7.5 Downsides

Two important disadvantages to trust status emerged from discussions. Firstly, trust status did not guarantee security from restructuring and service cuts. Two trusts the consultants spoke to were going through restructures. One arts manager within a trust that was consulted had recently been required to take on additional responsibilities and one or two others were worried about the security of their arts service even within trust status.

In addition, a couple of respondents spoke of additional administrative burdens. Within local authorities they benefitted from 'hidden' administrative and other service support. That no longer existed and they had to both manage the service and much of their own administration too.

One officer working for a commercial company contracted to deliver arts services said that it took some time to get company staff to understand the business model and a change in a finance or contracts manager meant the education process had to start afresh.

### 1.8 The relationship between trusts and local authorities

Trusts may be independent but they have service contracts with local authorities (LAs) and rely on these and ongoing relationships with LAs for their existence. The consultants therefore asked about the nature of the relationships with local authorities and what influence local authorities have in the management of the trust. Overall most respondents felt that trust status brought about a better relationship with local authorities. In some cases, the respondents said the local authorities had 'lots of influence'. However some respondents also saw the LA role as being strategic rather than directly managerial. The relationship with LAs was expressed in three ways:

#### 1.8.1 Management representation

In most cases local authorities have representation on trust Boards. This varies between one and three members. But it is clearly a minority representation in each case<sup>6</sup>. This also had a benefit as trusts had been able to recruit a wider and more appropriate range of external professional expertise to trust Boards. This was of benefit to both the trusts and to the local authorities.

At least two trusts identified issues where councillors on Boards had potential contractor/client conflicts of interest between their duties to the trust and to the council. In one case the trust has a local authority on the board as an observer only in order to remove potential conflicts of interest. Such potential conflicts of interest may be seen as a structural issue by local authorities or may be left to the individual councillor (or council representative) to manage themselves.

<sup>6</sup> Under the Local Government and Housing Act 1989 and The Local Authorities (Companies) Order 1995, if Local Authorities have more than 20% representation, the trust becomes a 'controlled company' ie it is seen in law as a wholly owned and run by the local authority.

### **1.8.2 LAAs and Corporate Priorities**

It was clear from a number of respondents that independence was an operational issue. Trusts still had to respond to LA corporate priorities, deliver against NI 11 targets and work to Local Area Agreement (LAA) priorities.

### **1.8.3 Management understanding and focus**

There was a feeling from several trusts that independence meant that they were better understood and appreciated by local authorities. Some cited stronger working relationships with Local Strategic Partnerships. Several said that as trusts they had stronger working relationships with council officers and with other agencies like Primary Care Trusts.

One respondent said the arts used to be the Cinderella service. There is now, they said, much more focus on value for money, but without pressure. Management had to prove to local authorities what the trust could do and that led to a better engagement and more interest. The arts were part of this.

One officer said that they worked more closely with council officers than members. They had a complicated annual planning process involving a large number of staff from both client and contractor, there were formal bi-monthly meetings, and a lot of client-contractor contact in between these formal meetings.

## **1.9 The experience of the independent arts trusts**

Two trusts consulted differed significantly in size and function from the rest. Both had been formed in the early 1990s with the strong support of the Arts Council of England with solely an arts remit. They were an alternative to an 'in-house' local authority arts officer and were designed to provide arts services for and on-behalf of the local authority.

In both cases, neighbouring authorities have or have had in-house arts services, making these independent trusts unusual. In one case the formation of the arts trust tied in with a local authority agenda of externalising services. One of the two trusts is an Arts Council (ACE) Regularly Funded Organisation (RFO) and they reported that ACE is working with it to re-evaluate its role in the area. The trust might, they said, become more regional.

Neither of these two trusts felt that their small size and specialist nature (ie just arts) was a disadvantage. It was clear from discussions that in both cases a key issue was the relationship with and expectations of the local authorities concerned. In one case, the contract was quite loose with little relationship to outputs or NI 11 targets. In the other case, the rationale for support was much more about hard instrumental outcomes.

Both independent arts trusts cited the importance of external collaborations and working with local authority leisure officers, with sports and museum services, whether internal or external to LAs and both saw working with external partners as offering significant opportunities.

One interesting issue emerged in one of these independent arts trusts. A potential reduction in income from their main local authority led them to develop contract relationships with other local authorities. This caused some concern from the 'founding' local authority. They didn't want to be the sole funder but told the trust 'they shouldn't work for other local authorities'. This was felt to be a local authority problem of perception and understanding rather than a problem for the trust.

### **1.10 Arts services in trusts – services and budgets**

A number of the leisure trusts consulted have a responsibility for funding the independent arts sector in their area that had previously been managed by the local authority.

The nature of this responsibility did seem to vary somewhat from trust to trust and further research would be needed to pin down precise details of such variances. However the examples below give some sense of these and highlight some issues that arts officers will have to think about if and when considering externalisation.

One trust consulted managed a grants budget of £170,000 or so for regularly funded organisations<sup>7</sup>, but said that whilst they managed the money, the local authority continued to have responsibility for making the funding decisions for these organisations. The small grants budget that this trust had for its own funding decisions was only about £5,000.

However, another trust had managed to increase arts project funding by up to 50% a year from external sources and also secured additional staffing through external bids. A third trust reported a re-focussing from arts development to event creation and management following trust status. The underlying rationale of this seemed to be that events create engagement, income and profile in a way that perhaps more process driven arts development does not. Another trust told the consultants that a bi-product of externalisation was that the independent arts sector now tended to get less attention than when the arts service was part of the local authority.

Another trust that was consulted had arts within its service provision, but the arts officer post relied entirely on external funding. The manager was working to try and get the arts officer post into the mainstream trust budget. Plus ça change!

However there was also a very positive outcome of a different sort in this trust. The local authority raised £6.5 million for a new arts, culture and enterprise centre and then asked the leisure trust to manage it.

The history of externalising leisure services originates largely from putting leisure centres, which are well defined tangible entities, out to external management. A similar arts example would be putting local authority-run theatres into trust or commercial management.

It seems that whilst arts development services can be part of wider leisure or cultural trusts, the issues of the more 'invisible' process-driven arts development and also the historic function of grant-funding the independent arts sector, create issues and nuances that will require careful thought, planning and negotiation.

Evidence shows that externalising arts services is achievable and has achieved positive results. However the nature of local authority services, which vary from place to place, means that externalising the arts service is not quite as straightforward as it might appear. What precisely is the arts service that you are seeking to transfer? Will the local authority agree to total transfer – ie officer, budget and all responsibilities and activities - or only partial externalisation, and if partial, what are the management and service implications?

Mapping, or revisiting, the detail of your arts service might be a very useful, if not vital, first step in thinking about externalisation.

## **1.11 Lessons to learn, hints and tips from the front line**

The consultants asked all the trusts what advice they would give arts officers thinking of advocating independent trust status or part of a leisure/culture service heading in this direction.

The responses varied quite widely and from the generic to the specific and included the following:

### **1.11.1 Macro issues**

Make sure it's the right choice for you and the right time to do it. Trust status is not a one size fits all model.

#### **Scale**

Scale makes a difference, larger trusts may find it easier to carry small services like the arts.

#### **Scope**

What services should be included in the trust? With hindsight, one trust said they thought they could have included Parks in the package.

#### **Time**

Take your time and get the right advice, don't rush. It will take longer than a year. You will be very stressed if you try and do it in too short a time frame! One trust manager described the process as '12 months of hard, difficult work'.

#### **Benefits**

What's in it for the arts and how can you make trust status work to your advantage?

### **1.11.2 Micro Issues**

#### **Finance**

Get your VAT right. If you don't, what might look viable on paper might turn out to be a loss-making proposition. VAT is different for a charitable enterprise to a business, so get the right advice.

**People**

The success of trust status depends on the authority and the personnel in it. One trust stressed the importance of informing staff and giving them input as part of the planning process. Get your people on board, the consultants were advised. Often people get the structure right but forget about the people side. People are often very afraid about the change that trust status implies, especially staff who have worked for a local authority for a long time.

**Your service**

Does your authority understand the arts impact on every corporate priority?

**Thinking differently**

Changing to an independent body is often thought about in legal, structural and financial terms but it's an emotional change too that requires a different way of thinking.

**1.12 Length of service contracts**

Three of the trusts surveyed had 10 year management agreements or contracts and this was the most common length. One of these three had secured a five year extension to the contract. One trust had an agreement for five years and one had an agreement for 29 years, however the trust's budget was still negotiated annually. One trust had started with a three year agreement and was now down to an annual agreement.

The following table sets out the position more clearly.

Trust	Formed	Contract length	Estimated contract Years to run
1	2003	10 + 5	Not known
2	2007	Not known	N/a
3	2003	10	4
4	2003	10	4
5	2000	29	20
6	2008	5	4
7	1994	Annual	N/a
8	1990	Not known	N/a
9	1991	Not known	N/a

## **Section 2**

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# **Strategic Commissioning**

## 2.0 Strategic Commissioning: Introduction

The consultants were asked to investigate and report on strategic commissioning as one of the possible alternative methods of protecting local authority arts services. Two factors have limited what they have been able to do in this area. First, limited time and second, it is a comparatively new area, although the principles will be very familiar to many local authority arts officers.

The consultants have had some brief contact with I&DeA who have some knowledge in this area, and they have done some secondary research and have spoken to one local authority (a nalgao member) who has some knowledge of and experience in this area.

### 2.1 Explaining Strategic Commissioning

Historically local authorities used to deliver most, if not all, services using 'in house' staff and resources. Many local authorities are now either outsourcing services to independent bodies like leisure trusts, or they are commissioning specific pieces of work to meet identified targets.

Strategic commissioning is one of four ways that local authority front line services can be commissioned. The full four ways are:

#### Regional

Regional commissioning is when two or more local authorities commission services together.

#### Strategic

Strategic commissioning is usually undertaken at board level.

#### Operational

Operational commissioning focuses on a particular locality or group.

#### Individual

Commissioning at the individual level involves purchasing services to produce an individually tailored package of support.<sup>8</sup>

Commissioning can be applied to all Council run services.<sup>9</sup> But it is particularly being used by Children's Trusts and Children's Services to design and implement services more effectively.

### 2.2 Commissioning and the arts

Bodies like local authority children's services, adult social care services and the youth justice system spend hundreds of millions of pounds of public funding each year providing services to their client groups.

Commissioning, strategic or otherwise, opens the door to other services or groups bidding for this work, so long as they can demonstrate the required expertise and ability to deliver outcomes.

Overall details of what local authority is doing what in respect of commissioning are beyond the scope of this report. But it seems that some local authorities are already commissioning quite a lot of services whilst others have yet to start.

However evidence suggests that this is a fast developing area. Several things suggest this:

- a) The Department for Children, Schools and Families (DCSF) and the Department of Health (DoH) have set up a programme "to help Children's Trusts plan, design and implement services more effectively." The programme, "will provide tailored support as and when Children's Trust partners need it, and has developed online resources and networks to help commissioners share best practice. In addition, the programme will hold events such as national and regional conferences." The programme will run to April 2011 and includes a very informative website - [www.commissioningsupport.org.uk/](http://www.commissioningsupport.org.uk/)
- b) In September 2009 I&DeA published "Creating Better Outcomes for Children and Young People by improving the Commissioning of Cultural Services". The report was commissioned by Arts Council England and Museums, Libraries and Arts. The 42 page report identifies the opportunities and challenges for cultural services in strategic commissioning and reports of field research into this area.<sup>10</sup>

<sup>8</sup> Source: [www.commissioningsupport.org.uk](http://www.commissioningsupport.org.uk) – Levels of Commissioning

<sup>9</sup> For example in September 2009, Westminster City Council unveiled plans to restructure their departments in order to place more emphasis on commissioning. The rationale was value for money "due to the inevitability of a reduction in income and rise in expenditure for the council, as well as the prospect of reduced grants."

<sup>10</sup> The "Creating Better Outcomes..." report can be downloaded from the I&DeA website - <http://www.idea.gov.uk/idk/aio/14269000>

- c) Martyn Allison, I&DeA's national advisor for cultural services told the consultants, "If we as a sector were to access just 0.5% of the health, social care and children's services budgets through commissioning it would increase our [cultural] budgets in councils by 22%." By 'cultural' I&DeA mean, in this instance, arts, museums and library services.

### 2.3 The "Creating Better Outcomes" report

It is worth highlighting a couple of other aspects of this report.

The report surveyed 12 local authority Children's Services across the country to see what was happening in practice.

It reports,

"The research identifies a number of opportunities where cultural organisations can make a strong strategic contribution: communicating children's voices and needs; priority underlying themes such as raising self-esteem, aspirations and confidence, enjoying and achieving and emotional well-being; problem areas where outcomes are not improving such as teenage pregnancy, NEETs [Not in Employment, Education or Training], obesity and mental health; complex areas of service delivery; locality and individually commissioned services. These opportunities require creative and innovative approaches, finding ways to bring expression and new horizons to children and young people and opening up new opportunities for them."

This short section alone suggests that if local authority arts services can engage with the commissioning process, it is possible that this may be an alternative way of protecting their position within local authorities, without having to go to trust status – though see also the caveats from the field research further on.

However, "Creating Better Outcomes..." also says,

"The research also highlights some significant challenges for the sector. Central to this is how the [cultural] sector is positioned and organised. Nationally, regionally and locally there are resources, strategies and mechanisms to engage third sector organisations in commissioning, ensure their representation on key bodies and build their capacity as providers of services. Cultural organisations are not generally part of or engaged in these approaches."

The report notes,

"Commissioners are also looking for efficiency as well as effectiveness, with a requirement for clear and robust safeguarding policies, value for money and relevant accreditation."

The research challenges the cultural sector to address these findings, decide its aspiration in relation to engagement with strategic commissioning and consider the changes needed to realise the opportunities and address the challenges.

### 2.4 Our commissioning field research

The consultants spoke to a relatively small Unitary Authority who had fairly recently become involved in bidding for strategic commissioning monies.

It became clear in the course of conversation that the nature of the work they were undertaking is what quite a lot of local authority arts officers and services have been undertaking in recent years. The key difference is that the work is now being commissioned and funded by other services –principally in this case Children's Services.

Strategic commissioning, they told us, is 'results-based commissioning'. It is 'not about what the arts want'.

The arts service the consultants talked to had undertaken two different types of roles in connection with strategic commissioning. First, they had worked with officers in other services to develop new ways of addressing socially disadvantaged indicators. In this case it was a programme with Sure Start to develop happier, healthier and more confident parent and through this the same in children.

Secondly, they had helped commission projects that arts organisations had benefited from. The project cited was a project to introduce young people to the democratic process and through this empower them.



Rochdale – Bird Project 2009 Link4Life, Rochdale



Rochdale – Falinge Creativity 2009 Link4Life, Rochdale

Both instances had come about not through responding to externally advertised tenders but through internal networking including council officer groups looking at how key targets could be met. The key issue in these instances was that the arts were at the table when the objectives and targets were being discussed.

Another project the arts officer cited was one looking holistically at place making and through this educating communities and even planners about design possibilities that could be built into a wide range of physical developments from the city centre outwards.

These initiatives had created schemes totalling around £250,000 most of which was time limited funding.<sup>11</sup>

The officer consulted said that the schemes they had been involved in both required a change of mindset from the historic one of funding and delivering traditional arts services. But in turn the approach also helped change the mindsets of other professionals and of the participating public.

## 2.5 Commissioning advice and the downside

The arts officer the consultants spoke to gave useful advice. Be clear on what your skills are. Arts companies always ask for money. It would be better, they said, if arts organisations were to say, “I understand your agenda and here’s where I think I can solve your problems.”

Commissioning has given arts and culture a profile and has helped create stronger relationships with politicians and finance. But it’s a two edged sword. If politicians and the public perceive that it is the arts organisations are delivering socially engaged arts services, then they may ask why a local authority needs an arts service.

The problem is that the often vital brokering role undertaken by the local authority arts service is frequently invisible to most people as well as to cultural organisations. There is an allied danger that local authorities end up ignoring the importance of cultural brokerage. There is also a danger that people try to reduce costs and provide what is needed but cheaper – eg without brokerage - and the value is diminished.

In addition, whilst a local authority arts service may play a significant brokerage role and help create new resources for external bodies it is likely that none of the money will actually go to or through the arts service. Thus to external eyes the arts service remains ‘a cost’ with no direct evidence of the added value or benefit.

## 2.6 Two commissioning case studies

The consultants were given two specific case studies, one with a positive outcome and one with positive results but with a twist in the tale.

### Case Study 1 Strengthening Youth Participation

The Council wished and needed to strengthen the understanding and engagement of young people in the democratic process.

From local knowledge, the arts officer realised that the education department at the local theatre had the capacity to deliver this. They approached the theatre who bid for and won the contract.

This led to a £150k project developing the voice of young people in local democracy. The project included engaging with/developing a youth parliament, schools council days and involvement in the national youth parliament.

The theatre's youth theatre helped young people ‘find their voice’ and a key outcome was the ‘voice and influence’ of young people. The local theatre was not the only means of developing a project like this, but the arts officer felt they would be the most appropriate organisation to do this.

### Case Study 2 The Youth Mysteries – A Cautionary Tale

Young people re-interpreted mediaeval mystery plays. The local Youth Offending Team (YOT) was working with a DJ to interpret the story of Exodus in a contemporary way.

To be part of the programme, young people had to be ‘clean’; that is they had not re-offended since their original offence. The Youth Mysteries was an 18 – 20 week funded programme and a great success. A group of 6 or 7 participants wanted to stay on after the project finished and do a follow up. The cost of a follow up programme was put at £1,800 for a year – this was the cost of an artist's time. The local authority arts service looked everywhere for the £1,800 but were unable to raise it.

Three days after the Youth Mysteries project stopped, one of the young participants who had wanted to stay on, re-offended. They got taken to court, and sent to a youth institution, at a cost to the taxpayer of £64,000 a year.

The moral of this story is that public sector funding is not always available where it can do the most good and the funding system is not flexible enough to create real, lasting results and value for money.

## 2.7 Commissioning: some conclusions

It would seem from the limited evidence the consultants have obtained that commissioning – strategic or otherwise – can offer significant opportunities to local authority arts services, arts organisations and artists. However its benefits would appear to depend on the following associated issues:

- The level of commissioning a local authority is engaged in.
- The ability of an arts service to be part of the discussions when strategic issues are being discussed. This is partly down to the abilities of the officer and partly down to the openness and inclusiveness of the authority.
- The creativity of arts officers in being able to develop arts solutions to long standing social issues.
- The ability of the arts service to demonstrate the value of their role in commissioning and brokering – Elected members can sometimes prefer to hear news from external bodies rather than their own staff!
- The capacity and skill of artists and arts organisations to deliver socially focussed outcomes. It is easy to think there is a limitless capacity of artists and arts organisations able to work in this way. But the availability and capacity might be less than we believe.

Finally, the arts have existed for so long on so little money that it may be hard for the sector to comprehend the scale of opportunity, if the above criteria are met. Case study two rather illustrates the point.

It is arguable that the cost of keeping one child in care, an institution or dealing with a problem family, could equate to the annual funding for a small RFO. More data is needed here clearly showing these costs.

However if cultural services can show that they can effectively address social problems and win mainstream social care funding to do this, then there is a win-win-win. Cultural services can:

- Reduce the 'care cost' in the medium to long term
- Create more work for artists and arts organisations and
- Address the 'lost opportunity cost' that the individuals concerned and society faces the moment a young person or an adult becomes institutionalised.

## 2.8 Strategic commissioning resources

Further information about strategic commissioning can be found at the following locations.

I&DeA's report, Creating Better Outcomes for Children and Young People by improving the Commissioning of Cultural Services is available at: <http://www.idea.gov.uk/idk/aio/14269000>

The Commissioning Support Programme's website "Better outcomes: Commissioning for Children and Young People" is at: [www.commissioningsupport.org.uk](http://www.commissioningsupport.org.uk). You can sign up for their email newsletter here.

## **Section 3**

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# **Getting to The Outside**

## 3.0 Getting to the outside: Introduction

**So, you, your management team or your politicians are thinking about externalisation. The aim of these guidelines is to give you, your colleagues and your politicians a body of knowledge, options and do's and don'ts to support you in your thinking and planning. This will apply whether you are looking at a complete leisure/culture service or just the arts. The advice in this section could be used to:**

- **Help your thinking in protecting the arts service**
- **Help you advise senior managers and elected Members of the issues involved in externalising a service and of how to ensure the arts can be included in such a process.**

**This section of the Outside In report looks at technical and managerial considerations. Section 4 contains a series of checklists to help you in your thinking and planning.**

**The transfer process involves a series of steps and considerations the sections below spell these out in more detail.**

### 3.1 Externalising your service

#### 3.1.1 The transfer process and considerations

There comes a time in the affairs of every local authority managed arts service when someone for one reason or another, suggests outsourcing it.

To date, much of the thinking on the externalisation of local authority managed services has focused upon the transfer of specific operations or services from local authority management to management by a 'trust' or to a commercial agency. Examples include theatres, galleries, arts centres or festivals.

However, the field is widening. As the research in section 1 of this report shows, a number of local authorities have successfully externalised all the delivery elements of a cultural service, such as leisure centre, sports development, libraries, museums and the arts. The rationale for this is often that services can be delivered at less cost or with greater impact and outcomes – or both. As the case studies in section one of this report show however there can also be other benefits.

The looming clouds of financial constraint and efficiency savings have hastened such considerations as cultural managers and arts officers strive not just to protect valuable services for the benefit of their community but to place them where their ongoing development is still very much an option.

The success of the transfer, from the perspective of the local authority, as well as the new governing body is closely tied to the level of research and planning invested in the creation of an appropriately resourced body. It is vital that the most appropriate model and structure for a transfer is identified.

After all research and due diligence, it is still possible that an arts service would be best served through remaining within local authority management, and this too needs to be recognised.

#### 3.1.2 What are the objectives of partnership/externalisation?

The first step in considering a transfer is to agree the governance objectives desired, in order to more accurately compare alternative governance with local authority management.

It is advisable to undertake a proper study to test all opportunities, issues and assumptions. This should initially cover:

- What it is you are proposing to transfer (including services, buildings and responsibilities)
- What benefits you expect from the transfer
- Who might be affected by the transfer
- What the governance options of the new transferred service might be



**Wigan: Haigh Festival – Local music festival for unsigned bands** Wigan Culture and Leisure Trust



**Wigan: Perceptions Exhibitions – Disability Arts Awareness Raising** Wigan Culture and Leisure Trust

You must know exactly what you want the study to test. Get this wrong and you risk wasting time and money. If you are going to consider a transfer, it is important you know why you're considering it, and the context in which it would have to take place if you intend it to make realistic recommendations.

There could be a number of reasons why you want to externalise services – you just need to know the ones that suit you – and these need to be understood by:

- Those with a say in any decision to transfer, e.g. Chief Executives, Members, Arts Officers, Venue Managers etc.
- Those whose current support for the organisation might be affected by the transfer, e.g. revenue funders, user groups
- People who currently don't support the service, but might if transferred to alternative management

The study needs to articulate who stands to benefit from a transfer. While alternative management may be shown to benefit the services which are to be transferred, if it doesn't deliver the necessary benefits to the local authority, then the arguments may not be sufficient to convince the local authority that the change is necessary. Do not forget that externalisation is a complex and time-consuming process which will require local authority resources (especially finance and legal) just to get to your new starting point.

Given this, it is advisable to consider risks and benefits from three perspectives:

- The authority
- The service
- The community

## **3.2 Transfers and the arts: managerial issues**

### **3.2.1 What do arts officers need to consider in relation to externalising services?**

So, you think you need to externalise your arts service and can see the benefits. But who else might be involved? And what might their views be?

Consider the local community response. Cutting investment in the arts can be a political risk. Experience suggests that, in the minds of local communities, threatening the arts can draw a response similar to the reactions that occur when the local bus service is threatened. Any transfer of service must find a way of acting as a catalyst for stronger community support for the service.

This is an opportunity to show council tax payers that an authority does have the best interests of the arts service at heart - with a transfer being seen as an improvement or protective measure not an opportunity to reduce support or cut it altogether.

Fail to achieve community support and people may be disinclined to engage with the arts in a way that supports the all important participation indicators. Arts people are also voting people, and evidence has shown that Members can suffer in the local ballot box over issues that communities care about.

### **3.2.2 Evaluating and managing service transfers**

Transfers cost money. Any operational savings to the local authority arising from a transfer in the first 1-2 years could well be offset by the cost of a transfer incurred by the authority. These transfer costs are likely to include expenditure incurred as a result of:

- **Negotiating the content of a revenue funding agreement:**  
For example the type of agreement - grant aided or service level contract
- **Ongoing communication between the local authority and its 'client'**
- **Potential Freedom of Information requests**  
From those affected by transfer
- **Incorporating and establishing a new trust (if this is the preferred option)**

A more detailed checklist of these issues is set out in section 4.

### 3.2.3 Exploring trust management issues

Potential trustees and the local authority will need to determine the following sets of issues. A number may incur expenditure. This list is indicative rather than exhaustive:

- The liabilities and responsibilities of trustees
- What assets the local authority will pass over
- The terms on which the trustees will hold and manage buildings and similar assets
- Agreeing the funding available from the local authority to the new trust (service contract terms)
- Agreeing the length of the service contract
- Agreeing any capital investment required
- Identifying community support and issues of potential concern to the community
- Identifying the necessary management and governance skills required to operate the new trust
- Establishing communications protocols between the local authority and the new trust to ensure good long term relations.

An expanded version of this checklist is contained in section 4.

### 3.2.4 Managing change internally and including the arts in any wider change

Managing change is as important as the technical and legal details of the change itself. The change process is a time when all sorts of rumours, concerns and fears can emerge. Many of these can be unfounded, but unless they are dealt with quickly they can destabilise or side track an otherwise well planned and managed process.

These issues may be about 'internal issues', but where a service has clients and/or partnerships they can also affect external issues.

Clear and consistent communications are your best means of avoiding the worst impact of fear and rumour. From an employee perspective, long periods of silence can be (and often are) interpreted as the council keeping quiet about plans which they know will not be popular – even when there is no foundation for this.

While staff may initially favour transfer, concern for their jobs, roles, position and status under a new organisation and management will, quite possibly, emerge.

Any transfer of staff to a new body has to comply with the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). These regulations require employers to preserve employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.

A transfer process will benefit from a transfer working party with agreed terms of reference and responsibilities. This should include senior management team and a staff representative, as well as other local authority officers and Members. It should also include representatives of each service affected by the transfer; the arts officer or their nominee should thus be part of any transfer working party. In practice, membership should not be too large as, the more people involved the slower the speed of progress as it will take longer to set up meetings, while the cost of consultation and communications will increase. Small arts services will need to factor time in attending and servicing working parties into their annual work plan and may need to reduce services for the time it takes to effect the transfer. The longer term benefits of this, as an investment for the future, will need to be clearly communicated to stakeholders.

### 3.2.5 Managing external arts relationships and expectations

As suggested in the sections above, keeping arts clients and stakeholders updated on developments will help smooth uncertainty in what can be a lengthy and complex process.

There are several ways of achieving this and you will be able to judge which is appropriate from your knowledge of your service and locality. Your options include:

- **A simple newsletter**
- **An arts stakeholders group to feed into the transfer process**



York St John's University Group perform The Crucifixion, York Youth Mysteries 2008 Copyright City of York Council

- **A memorandum of understanding**

This would outline an understanding of expectations and responsibilities together with an effective communications framework. The latter should include provision for regular formal and informal meetings, reports and contact responsibilities. It will be essential to ensure that communications regularly occur and not just as and when the trust needs financial support from the council.

- **Observer representation or full membership of a shadow board**

In many cases new ventures get a shadow board established to discuss, plan and prepare for the new entity in advance of the legal formation being finalised. Externalisation offers the opportunity to increase arts expertise at management level. A shadow board member or observer offers this opportunity at an early stage.

### 3.3 Wider managerial issues

#### 3.3.1 Managerial issues and processes

As well as the legal structure, dealt with in section 3.5 below, the externalisation process will need to consider the following issues:

- **Services to be transferred**
- **Assets (buildings and equipment)**
- **And whether these are to be transferred or leased**
- **Staffing**
- **Financial management**

Checklists for each of these are contained in Section 4.

A transfer task team, or similar, will need to develop the overall checklists in this report into a change management process specific to the authority concerned to ensure that the above issues are addressed in detail.

#### 3.3.2 Fitness for transfer

If initial research indicates there are sufficient benefits to make a transfer desirable, it is then advisable to make a final assessment of the service to assess its fitness for transfer. This will identify matters that can be resolved prior to the transfer process. Its purpose is to ensure that the transfer process runs as smoothly as possible and it can help to reduce the cost of the transfer process.

A transfer implies that there is a new body of people who will agree to accept responsibility for the service. Without this the transferred service cannot legally exist. The board members or trustees of the new body will need to know that whatever they accept is viable as a going concern. Try and hand over a service stripped of the resources needed to sustain it and they will (or should) be perfectly within their rights to refuse to accept it.

Interestingly, if they do accept responsibility for a service that can be shown to have been non-viable from the start and with no plans or resources to rescue it, then they could even be personally liable for its debts as and when it collapses. That's why all prospective managements must carry out a due diligence exercise. They are therefore advised to carry out checks to ensure that:

- They are not inheriting any existing or accepting any potential liabilities that they would be unable to meet
- The proposed activities of the company are viable
- The necessary safeguards are in place to ensure that the Company can trade with the ability to settle with its creditors, i.e. a viable cash flow and certain guarantees on funding are in place
- The business plan is thorough and viable, with any risks noted
- The trust has the financial capacity to cover any obligation or responsibility required of it in the transfer documents
- The activities that the Trust may be required to carry out within any Service Level Agreement do not conflict with its charitable purposes
- The Trust is aware of all the staff (and contractual and financial implications) transferring with the organisation including those employed by external contractors

These checks are not limited to the shadow board/trustees. They apply equally to the local authority contracting out the service. Before a local authority establishes/invites a Trust to accept responsibility for one or more of its services it is advisable for it to review both the organisation and its own about-to-transfer service to establish whether it is fit for transfer and identify any issues that the transfer process would have to address. For example, do all current staff have up to date contracts and job descriptions? Are there any liabilities such as outstanding insurance claims or covenants on properties that would need to be resolved? Is the business in a stable condition, and effectively managed? In what condition are its facilities?

Identifying these and other factors, and preparing the service for transfer will make the transfer process easier and less likely to result in acrimony or dispute. It is rather like undertaking a survey on your house before selling it. You identify a number of jobs to do that will improve its attractiveness to a buyer before putting it on the market.

A 'Fitness for Transfer' programme can include:

- A financial healthcheck of the organisation or service to assess its viability as going concern
- A building condition survey
- Charitable status compatibility assessment
- An organisational review to include user trends, warranties, premises, covenants, equipment ownership and condition, personnel. How well is it performing?
- Organisational performance levels
- A review of relevant policies, strategies and plans and any financial or organisational implications
- A review of transfer arrangements/cost implications, e.g. will a new telephone system, IT system or corporate design be required?

## 3.4 Legal framework issues

### 3.4.1 The legal framework options

Contracting out a leisure or cultural service will probably involve establishing a new legal vehicle to own manage and run the service including any buildings or staff. This is usually referred to as a leisure trust or cultural trust.

There are several legal options available to a contracted out service. The most common are:

- A Company Limited By Guarantee (CLG) with charitable status
- An Industrial Providential Society (IPS)

The first is the most commonly used. Other 'not for profit' governance options include:

- Community Interest Companies (CICs) and,
- The Charitable Incorporated Organisation (CIO)

Remember also, that it may be necessary to include a trading subsidiary company within your preferred model, if more than about 10% of your earned income comes from activities that are not in direct support of your Objects. For example, if your bar only sells drinks to people that have purchased tickets for your events, you probably won't need a subsidiary trading company. If however your bar is open to the public regardless of whether they have tickets for your events, and contributes more than 10% of your revenue, then you will probably need a subsidiary trading company.

All these legal structures have their pros and cons. For example, a CIC with its 'asset lock' will help to ensure that a community building will be locked into community ownership rather than sold off to a developer.

However CIC's are not charities and therefore cannot reclaim tax on donations or apply to a large number of trusts and foundations for funding. A CLG with charitable status may give you access to new revenue sources, but if it is culturally exempt<sup>12</sup>, it may not be able to recover VAT on expenditure.

### 3.4.2 Private sector contract

Commercial transfer options only succeed if they attract an appropriate level of interest from agencies with the financial reserves as well as appropriate expertise.

With theatres for example, experience shows that to be financially viable as an independent entity normally requires a theatre capacity of more than 1,000 seats freedom to take on the catering and bar contract. Venues with already franchised catering and bar with long contract terms, tend not to be terribly attractive to commercial investors.

While tender bids may be forthcoming from smaller agencies, including those set up specifically to manage the venue to be transferred, small or new companies tend to lack sufficient capital to be able to invest in the business and manage the cashflow.

Single theatres do not offer the economies of scale that will come from running a chain of theatres. Small and/or independent bidders may, therefore, continue to represent a risk to the local authority who will be left to pick up the pieces should they fail.

To invite external tenders, a full tender brief must be established to enable a potential suppliers the opportunity to carry out sufficient due diligence of the service in the preparation of a competitive bid. This can take some time to prepare.

The Contents of a full tender brief should include:

- The service provision: policies, programmes, staffing structure etc
- The premises: what exactly is included
- Lease heads of terms
- Contractors responsibilities
- Service financial information: past accounts etc.
- TUPE information/considerations that a tender will need to take into account
- Council monitoring and review requirements and responsibilities
- Audience and/or community user information
- Catchment areas demographics and economic position
- Other local arts facility information
- Pro forma documents:
  - Form of tender
  - Profit and loss questionnaire
  - Contractor's policy statements, eg equal opportunities, Environmental issues

### 3.4.3 Sector partnerships

Partnerships can be formed between trusts or commercial organisations with a view to achieving 'more for less' as a result of working together, while still retaining a degree of independence.

The emerging view is that such partnerships should be a means of getting action from relevant bodies doing existing programmes through more effective delivery. They should also help secure value added mutual benefit through saving money, time or increasing revenue-earning capacity.

Partnerships provide:

- Opportunities to develop new service models
- A means to effect positive change
- A means to allow good ideas to be shared or replicated

It is important that a partnership establishes:

- Key outcomes
- Key outputs
- Headline targets

Partnerships must be visible – and their benefits must be seen to be of benefit to those who invest in them. They must be mutual through sharing or work. They will not work effectively if they are imbalanced with one partner doing most of the work. They must also ensure quality. Partnerships also take time to establish themselves and therefore need to operate within a stable environment.

It is important to note the influence of a personality in making a partnership happen – or the commitment that a campaign or windfall opportunity presents. Partnerships don't work when simply created as a vehicle – they need a motivation and a driver.

A partnership must have clarity of purpose. Vagueness of direction – or a multiplicity of objectives – will undermine its effectiveness and, therefore, its usefulness. It must have a clear role, supported by all partners and then be driven forward on that basis. It must deserve the moral authority to lead.

The main challenge in any partnership is continuing to deliver after the initial burst of inspiration and planning has occurred in order to see the project through.

Partnerships therefore should be recognised as having the capacity to deliver tangible benefits to all partners and must have power and resources to work. Planning groups should not be too large – this slows things up.

Partnerships don't always need to be limited by geography. They can work wherever there is a need and a commitment to sharing or investing in resources to deliver benefits unobtainable by an individual organisation. Partnership bodies must not be:

- Another administrative layer
- A talking shop
- A substitute for existing partnerships
- Seen as a possessor of a pot of gold
- So complex that they result in resources being stretched too thinly, weakening the quality of the process and/or product.

#### **3.4.4 Contracting Out: what needs to be considered?**

In contracting out a leisure or cultural service, the following issues need to be considered:

- Premises
- Asset Register
- Utilities
- Premises Staff
- Premises lease(s)
- Condition of Premises/facilities
- Ownership and condition of equipment
- Surveys
- Permitted Uses within the Buildings
- Building refurbishment and repair issues
- Other Lease Issues

There is considerable detail involved in the above issues and a detailed checklist is contained in section 4.

#### **3.4.5 Scope of activity (just arts or all leisure and culture?)**

Contracting out commonly involves a 'bundle' of services but these vary from local authority to authority. There are a number of options including the following:

- **Single service**  
Just one aspect of a leisure/cultural service is contracted out. This most commonly undertaken in identifiable building based services like local authority theatre and museums.
- **Arts/cultural service**
- **Leisure or cultural service**  
Including non-arts facilities and services. The key concern is that one element does not become a 'poor relation' to the others within the trust.

- **Cross-authority**

The creation of an independent arts organisation comprising organisations and services from more than one local authority

Service scope considerations go well beyond what services are to be contracted out. A key consideration in contracting out an arts or cultural service is the distinction between strategy and operations. The chief purpose of contracting out is normally to gain operational benefits. But operations are often the product of the strategic framework they operate within. Some thought needs to be given about the relationship between strategy and operations in any contracted out arrangement.

Will the entire service be contracted out, or will the local authority retain officers with a strategic role? If the strategic role is contracted out how and where will strategic issues be discussed between the authority and the trust and how will strategic delivery be monitored?

Retaining some form of strategic role in advising on and developing cultural services can offer significant advantages to a contracted out service. One trust the consultants spoke to explained that they have a strategic as well as an operational role as part of their agreement with their 'home' local authority. This, offered important benefits, giving them a significant amount of influence and control over future developments and drawing them closer to the local authority world. Without this strategic role, they said, it would be much harder to maintain the higher level links into the authority or make sure that they are up to speed with the changing landscape for local authorities, and therefore able to respond effectively to those changes.

These questions have an implication on the employment terms and job details of contracted out staff. In addition where does the responsibility for grant aiding independent cultural delivery lie, including the management and monitoring of cultural grants to this sector?



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### 3.4.6 Legal framework issues

There is a need in any transfer undertakings to consider legal issues including:

- Outstanding liabilities
- Insurance
- Compliance records
- Licence transfers
- DDA compliance issues
- Future capital development management and responsibilities
- Shadow trust costs
- Support services agreement
- Transfer of artist and other such contracts
- Transfer of artworks associated with buildings

Inevitably there can be significant issues of detail here. A more detailed legal issues checklist is contained in section 4.

### 3.4.7 Management issues

Contracting out a service or services to a new trust will inevitably involve a number of management issues. The range, level and complexity will depend on the nature of the services being contracted out and by local circumstances.

But, in general, they are likely to include:

- Budget
- VAT status
- New equipment
- Service transfer or termination

There is considerable detail involved in the above issues and a detailed checklist is contained in section 4.



North Kesteven – Branston Mosaics - community project Arts NK, Lincolnshire

### 3.4.8 Potential financial savings and income generating opportunities

Contracting a service out offers potential financial savings. These need to be carefully evaluated as the benefits will vary from local authority to local authority. The variances will be determined by size and range of services and facilities and other local factors.

Experience shows that the potential financial savings for leisure/culture trusts (and their sponsoring local authorities) can include those listed below. But not all of these are savings to both the local authority and the trust and a saving to one may be a loss to the other. The savings and income generation opportunities include the following:

- **Savings opportunities**
  - Non Domestic Rates (NNDR)
  - Local Authority service recharges
  - Tax implications, particularly VAT
- **Income generation opportunities**
  - Increased ticket sales, ancillary, ticket yields
  - Fundraising potential
  - New services
  - Contracts with other local authorities

Inevitably there can be significant issues of detail here. A more detailed legal issues checklist is contained in section 4.

### 3.4.9 Finance and fundraising considerations

Whilst trust status may offer attractive financial opportunities, as well as managerial ones, realistic consideration needs to be given to the time it will take to establish the trust and then develop its services. These need to be carefully considered in cashflow and financial forecasting. Local authority staff considering contracting out should consider the following:

- It can take 3-5 years for a new trust to develop a sustainable level of funding from contributed income sources
- Other funders are unlikely to provide top up funding if it is simply seen as compensating for a reduction in a local authority's support
- Fundraising is time consuming and highly skilled. If an organisation's budget assumes a reasonable sum from this source, then it must ensure it has the appropriate level of professional expertise and resources in place. Simply adding it to someone's job description is unlikely to result in success.

## 3.5 Implementation Task List

A large number and a wide range of tasks is require to effect a successful transfer to independent status. This will inevitably involve:

- Financial expertise
- Legal expertise
- Managerial expertise
- Service specialism expertise and
- Communications expertise.

A checklist of the headline issues is contained in Section 4.



## **Section 4**

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# **Technical Checklists & Appendices**

## 4.1 Exploring Trust Management Issues The Advantages of Charity Status

**According to the Charity Commission, the main advantages are that charities:**

- Do not normally have to pay income/corporation tax (in the case of some types of income) capital gains tax, stamp duty and gifts to charities are free of inheritance tax.
- Pay no more than 20% of normal business rates on the buildings which they use and occupy to further their charitable purposes.
- Can get special VAT treatment in some circumstances.
- Are often able to raise funds from the public, grant-making trusts and local government more easily than non-charitable bodies.
- Can formally represent and help to meet the needs of the community.
- Are able to give the public the assurance that they are being monitored and advised by the Charity Commission.
- Can seek legal, financial, administrative, fundraising and charitable advice and information from the Charity Commission.
- Can operate a commercial trading subsidiary.

## 4.2 Other advantages accrued through Trust management Checklist

- Protection of cultural and educational content within the programme: Charitable governing documents give protection to educational and cultural content of programming.
- Stability: Establishes a stable platform for the management of the organisation, reducing the impact of changing political influences.
- Local authority participation: Guarantees Local Authority participation at board level (not possible through commercial transfers) and through grant allocation.
- Accountability: Still leaves the option for providing a service statement for the local authority in return for grant aid.
- Fundraising: Trust status makes it easier to attract sponsorship, grants and donations (particularly through tax effective giving).
- Predictability: The Business Plan should give a clear foundation for funding requirements.
- Staff morale: Independence and control provide motivation for management and staff.
- Reduced cost: The reduction of Uniform Business Rates cost by at least 80% (100% if discretionary reduction is agreed).
- Wider income base: Development of in-house catering facilities and touring.
- Reduced overheads to local authority: The organisation is removed from the central recharges arguments that seem to flourish in every local authority.
- Protection of community involvement: The trust is able to provide a high standard of support to local groups and charities that may wish to use its facilities and services.

### 4.3 Disadvantages of Charity Status

- Finite budget – no automatic financial ‘safety net’ from the local authority
- Commercial pressures
- There are restrictions on what charities can do, both in terms of the types of work they do, and the ways in which they can operate.
- A charity must have exclusively charitable purposes. To become a charity your organisation would have to stop its non-charitable activities or operate them through a trading subsidiary. You will need to consider carefully if becoming a charity will severely restrict planned activities.
- The amount of political or campaigning activities, which your charity can take on, is limited. Guidelines can be found in the Charity Commission’s publications available online.
- Strict rules apply to trading by charities. Guidance can be found on the Charity Commission’s website.
- Trustees are not allowed to receive financial benefits from the charity that they manage, unless this is specifically authorised by the governing document of the charity or by the Charity Commission. Financial benefits include salaries, services, or the awarding of business contracts to a trustee’s own business from the charity. Benefits which are incompatible with the establishment of an organisation for exclusively charitable purposes cannot be authorised at all. Trustees are, however, entitled to be reimbursed for their reasonable out-of-pocket expenses, for example, train fares to trustee meetings.
- Trustees need to avoid any situation where charitable and personal interests conflict.
- Charity law imposes certain financial reporting obligations; these vary with the size of the charity.

#### 4.4 Staffing issues (TUPE) Checklist

1. Job specifications up to date and accurate
2. Terms and conditions of service
3. Remuneration
4. Period of continuous employment: start date
5. Disclosure of 'employee liability information'
6. Transfer consultation requirements and timetable
7. Will a new management need to employ new staff and if so, how will these be dovetailed with TUPE-protected staff?
8. Will any other staff from the council's internal service departments be included within the transfer, eg finance or HR staff.
9. Change of roles and mindsets: how embedded is local authority mentality?
10. Will there need to be changes to the existing staffing structure? NB: Recruitment and employee costs will need to be factored into the new budget.
11. Superannuation arrangements including admitted body status and pension provision
12. Consultation with the affected workforce
13. Write new Conditions of Service and Statement of Particulars in line with the local authority contract.
14. Agree with Unions
15. Meet Union representatives
16. Meet staff at a formal meeting - invite Union representatives
17. Meet Heads of Department to identify specific problems (eg positions which may be redundant)
18. Meet staff individually to compare their current job with the job description
19. Check salary, length of service, terms and conditions
20. Identify staff who do not wish to transfer
21. Facilitate their training/interviews, early retirement etc
22. Amend job descriptions and agree
23. Identify areas where harmonisation of terms and conditions may be possible
24. Identify skill gaps and write new job descriptions in line with budgets.
25. Advertise new posts internally
26. Interview and appoint
27. Advertise remainder externally
28. Interview and appoint
29. Meet part-time staff in large groups. Give all staff a contract letter
30. Speak to outside contractors. Identify 'risk' areas
31. Give staff their contracts individually, with their Head of Department present
32. Hold regular staff meetings with project team
33. Ensure all staff have read their contracts and returned them, signed by the first day of trust management

## 4.5 Some Examples of contracting out objectives

Here are some examples of objectives – although this list is by no means exhaustive. And remember, the more objectives you define, the more time consuming/expensive the feasibility study necessary to assess them. Once the Objectives can then be agreed an assessment of the feasibility of an alternative management option can then be undertaken. Objectives include:

- To ensure financial security for the current scale and quality of services provided by the venue
- The capacity to reduce the financial impact of prevailing and future council management and operational policies upon the venue.
- To reduce the venue's level of dependence upon the council's financial support through strengthening its capacity to generate income from other sources
- To increase the value for money the council receives from its investment in the venue
- To note whether a transfer would enable community organisations to support the council's corporate objectives in ways that are more community-responsive and more closely related to local needs
- To create the most efficient and effective working relationship between the venue and the council
- To provide the same level of service more effectively through reducing the time required by other council functions/requirements
- To protect the venue's artistic integrity, ensuring the best means for the venue to remain in operation as a professional venue
- Contextual issues to take into account:
  - Timescale
  - Realism
  - External initiatives and developments
  - Support
  - Premises
  - Legal
- Local user considerations
  - Hiring policies
  - Revenue implications
  - Alternative venues
  - Equipment ownership / storage rights
  - Support
  - Volunteers
  - Fundraising
- Definition of 'savings', eg what elements of recharges can be included as savings against the objectives? IT

## 4.6 Other Trust Management Issues Checklist

- **The liabilities and responsibilities of trustees**

The liabilities and responsibilities will be contained in the trust's constitution. If it is a company, it will also be governed by company law. The language of constitutions and company memorandum and articles of association can be daunting, especially to specialists and the community. Care thus needs to be taken to spell out what the trustees' duties and responsibilities are. This is where a period acting as a shadow trust or board can be very valuable. Publications like "Care, Diligence and Skill: a corporate governance handbook for arts organisations"<sup>13</sup> can be useful as well.

- **What assets the local authority will pass over**

Clarity on this is vital as it will probably determine a good portion of the trust's focus and time. The trust needs to establish an asset register containing a description of the assets (which may be all or any of buildings, equipment or land) plus details of condition and any duties or covenants attaching to them.

- **The terms on which the trustees will hold and manage buildings and similar assets**

Does the trust own the buildings and assets? Is it managing them on a lease or contract or is it managing them for the local authority?

- **Agreeing the funding available from the local authority to the new trust**

What are the service contract terms? How will the grant be paid? Will adjustments be made for inflation? At what point and how will they be calculated? Are there contract break points? Is there an exit strategy for both parties?

- **Agreeing the length of the service contract**

What is the length of the contract and what is the process for extension or contract renewal?

- **Agreeing any capital investment required**

What is the process for agreeing on and securing capital investment to improve/develop buildings and equipment managed by the trust under the contract?

- **Other capital investment issues**

If opportunities for new capital facilities or funding arise, what are the respective roles of the local authority and trust in this and how is this articulated in the service contract? Could the local authority develop new facilities outside the trust? Will it offer the trust 'first refusal' for development. Will the trust be given notice of intent to bid or develop?

- **Identifying community support and issues of potential concern to the community**

How will community interests in the services and facilities be monitored and managed?

- **Identifying the necessary management and governance skills required to operate the new trust**

What governance skills are required? How can they be developed?

- **Establishing communications protocols between the local authority and the new trust to ensure good long term relations**

Will the relationship between the local authority and the trust just be through board members? Should communications between the two be on a 'need to know' basis or informal outside of the board? Should a more formal reporting system be established, if so at what level and how frequently?

## 4.7 Contracting Out What Needs to Be Considered Checklist

### Management issues

What factors will have an impact on operational expenditure and one-off factors incurred under transfer costs? These include:

- Budget: comparative budget to identify potential cost savings
- VAT status
- New equipment. Some new equipment will need to be purchased as part of the 'separation' from the local authority. Purchase and ongoing maintenance cost factors will need to be identified and included in the comparative budget. Examples include:
  - Telephone exchange
  - Computer hardware / intranet (including location of server)
  - Website: re-build / domain name transfer
  - Box office (including location of server)
- Services: It will be necessary to determine whether services can be transferred, or whether they can be terminated and new contracts sought. The cost implications of each option will need to be identified and factored into the comparative budget including:
  - Utility contracts and revised tariffs
  - Insurance
  - Payroll
  - Service contracts, eg fire equipment, electrical testing, brewery, catering equipment, lifts, alarms.

### Premises

- Shared premises or facilities, eg
- Foyers
- Toilets
- Lifts
- Plant
- Security
- Service contracts such as security, maintenance

### Asset Register

- Preparation of an asset register listing what is to be transferred, its condition and, where appropriate, depreciated value.

### Utilities eg electricity, gas, oil, water, sewerage, waste disposal

- Are they (or can they be) zoned or separated?

### Premises Staff

- Including staff that may have already been contracted out to a commercial agency but who work within the service, eg cleaning or catering staff

### Premises lease(s)

- Heads of terms
- Responsibilities
- Length
- Future capital development issues
- Termination

### Condition of Premises/facilities

- To note areas where the council may have to indemnify a new agency finding itself having to make immediate investment in replacing facilities that fail compliance tests.
- Covenants on the premises: Some buildings, having been gifted to a local authority may have covenants restricting future usage
- Public access/spaces and responsibilities
- Parking and vehicle access, including rights and responsibilities

## 4.8 Legal Issues Checklist

- **Outstanding liabilities**  
Eg insurance claims and pending settlements
- **Insurance**
- **Compliance records**  
Are these up to date?
- **Licence transfers**
  - Public and Performance licences
  - Liquor Licence
  - PRS and PPL agreements
  - Computer or equipment service agreements
  - Data Protection (re-registration will be required)
- **Legal work history**
- **DDA compliance issues**
- **Existing franchise(s)eg external catering or cleaning contracts in place**
- **Future capital development management and responsibilities**  
Including taking into account tax implications.
- **Shadow trust costs**  
If transferring to a trust, the shadow trust will need funding to cover its legal and other costs. The council will need to make provision for this within the transfer budget as the trust must appoint its own independent advisors.
- **Support services agreement**  
A council may continue to provide some services at cost. These need to be identified.  
NB: A council cannot stipulate that a trust must purchase services from the council. This would make it ineligible for charitable status.
- **Transfer of artist and other such contracts**  
This includes ensuring that contracts can first be transferred, and then implementing transfer arrangements when appropriate. Inserting a clause into all contract issued once an intention to transfer has been agreed that allows them to be assigned to a new management team is recommended.

## 4.9 **Financial savings and income generation** **Checklist**

- **Non Domestic Rates (NNDR)**

Charities can claim 80% mandatory NNDR reduction with a further 20% discretionary. NB: If a trading subsidiary or other commercial concern occupies a part of the premises on a permanent basis, then that part of the premises cannot be included within the calculation of the discount entitlement.

- **Recharges**

Some local authorities recharge central service costs (eg legal and finance) to individual services. This may offer a saving to the trust, though they may still need to buy in these services. It could be an income loss to the local authority.

- **Tax implications, particularly VAT**

This is a complex area where detailed expert advice is needed.

- **Increase ticket sales, ancillary, ticket yields**

Evidence suggests that in properly managed and resourced organisations, sales increase by between 10-15% within 2-3 years. There is no standard reason for calculating this – it just occurs.

- **Risks**

Eg what could go wrong either during the transfer process, and once the new management has assumed responsibility for the service(s), and what action will be taken to prevent or mitigate their impact?

- **Fundraising income potential**

Charitable status provides access to a wide range of potential funding not accessible while under local authority control including:

- Grants from trusts and foundations
- Tax-effective donations from private and corporate sources. The public are far more inclined to make a donation to a trust than to a local authority.
- A trust, having faster decision-making processes than a local authority, has the ability to react faster to funding opportunities

- **New services**

Similarly a trust may find it has more freedom and flexibility to develop new leisure/cultural services than a local authority and the ability to raise the required investment to capitalise them.

- **Contracts other local authorities**

Some trusts have also been able to win service contracts from other local authority areas.

## 4.10 Management Issues Checklist

- **Budget**

Comparative budget to identify potential cost savings

- **VAT status**

- **New equipment**

Some new equipment will need to be purchased as part of the 'separation' from the local authority. Purchase and ongoing maintenance cost factors will need to be identified and included in the comparative budget. Examples include:

- Telephone exchange
- Computer hardware/intranet (including location of server)
- Website: re-build/domain name transfer
- Box office (including location of server)

- **Management service transfer or termination**

It will be necessary to determine whether services can be transferred, or whether they can be terminated and new contracts sought. The cost implications of each option will need to be identified and factored into the comparative budget including:

- Utility contracts and revised tariffs
- Insurance
- Payroll
- Service contracts, eg fire equipment, electrical testing, brewery, catering equipment, lifts, alarms.

There may be implications in the above for the local authority arts officer and their role eg from direct delivery to contract managing.

#### **4.11 Implementation task Checklist**

1. Registering with the Charity Commission – Form RE 1
2. Business stationery in compliance with company law requirements
3. Complete form 288s
4. Pension scheme trustees
5. Register the Companies
6. Register the new company for Data Protection
7. Register for PAYE
8. Register for VAT
9. Register for National Insurance
10. Health and Safety procedures
11. Installing the accounts system and advising budget holders of procedures
12. Agree Bank Mandates
13. Arrange final local authority wages and salaries.
14. Check if any employees are on long-term training schemes
15. Identify assumed contracts
16. Contact utilities.
17. Finalise debtors/creditors in financial system for transfer.
18. Return relevant books and accounts to parent organisation.
19. Check whether any arts or museum items on loan? Review loan agreement and insurances.
20. The launch of the trust to the press and public – exactly what image is being created?
21. Final signing over of contracts
22. Notification to suppliers
23. Issue staff handbook for the trust to Directors and employees
24. Prepare and carry out stock take and inventory
25. Negotiate credit card commission rates for the new organisation
26. Check all the insurances are in place
27. Transfer of all licences
28. Design and order new stationery (to meets legal as well as design requirements)

## 4.12 Evaluating and Managing Service Transfers Checklist

### 1. Negotiating the content of a revenue funding agreement:

- Type of agreement - eg grant or service level contract
- Length
- Terms and conditions
- Changes and termination
- Monitoring and evaluation
- Contacts and responsibilities
- Accreditation

### 2. Ongoing communication between the local authority and its 'client' (formal and informal):

- Meetings
- Preparation of documents
- Travel
- Member and Shadow Trust expenses

### 3. Potential Freedom of Information requests

- From staff concerned about their position
- Any agency undertaking due diligence work

### 4. Incorporating and establishing a new trust (if this is the preferred option)

The local authority will need to initiate this process and provide support to help it establish itself to the point whereby it is sufficiently capable and confident to take over the service.

This includes:

- Recruiting a Chair and Trustees
- Agreeing Memorandum and Articles of Association
- Applying for charitable status
- Forming the company: registration with Companies House
- Establish the funding base.
- Decide the basis of provision for services the local authority will continue to provide (if any)
- Prepare a business plan
- Appointment of bankers, accountants, legal team
- Register the new trust/company for the future – Data Protection, PAYE, VAT and NI
- Establish operating systems for the new organisation
- Establish identity of new organisation (cost factor)
- Arrange for stock check and inventory

# Appendix 1

## List of Research Interviewees

**Beate Mielemeier**, Arts Manager, Link4Life, Rochdale  
[www.link4life.org](http://www.link4life.org)

**Janet Parker**, Principal Arts Officer, Luton Cultural Services Trust  
[www.lutonculture.com](http://www.lutonculture.com)

**Pete Gascoigne**, Executive Director (Libraries, Heritage and Arts) Wigan Culture and Leisure Trust  
[www.wlct.org](http://www.wlct.org)

**Alison Goode**, Executive Director of Development and Leroy Philbrooke, Arts Development Officer Pendle Leisure Trust  
[www.pendleleisuretrust.co.uk](http://www.pendleleisuretrust.co.uk)

**Angela-Gaye Mallory-Starks**, Arts and Heritage Development Manager, Cultural Community Partnerships, East Northamptonshire  
[www.culturalcommunitypartnerships.org.uk](http://www.culturalcommunitypartnerships.org.uk)

**Elaine Knight**, Arts NK, North Kesteven, Lincolnshire (Leisure Connections)<sup>14</sup>  
[www.artsnk.org](http://www.artsnk.org)

**Jane Wilson**, Director, AdEC, Cambridgeshire  
[www.adec.org.uk](http://www.adec.org.uk)

**Adrian Lochhead**, Director, Eden Arts, Cumbria  
[www.edenarts.co.uk](http://www.edenarts.co.uk)

**Greenwich Leisure Limited**<sup>15</sup>  
[www.gll.org](http://www.gll.org)

**Gill Cooper**, Head of Arts and Culture, City of York  
[www.york.gov.uk/education/arts/](http://www.york.gov.uk/education/arts/)

**Jo Askam**, Arts Officer, St Albans Arts, Sports and Health (SAASH)  
[www.harperfitness.co.uk/st-albans](http://www.harperfitness.co.uk/st-albans)

**Adam Gent**, Arts Development Officer, Bournemouth Borough Council  
[www.bournemouth.gov.uk/Residents/Arts/](http://www.bournemouth.gov.uk/Residents/Arts/)

**Our grateful thanks to the above for their time and input to this report.**

## Appendix 2

### Interview Questions

1. When did the contracted out service start?
2. What does the contracted out service include?
3. What is the legal structure of the contracted out service? (Trust, commercial etc)
4. How many staff does the trust employ?
5. What is the trust's approximate turnover?
6. Does the contracting out include an arts service?
7. What was the reason for contracting out?
8. Has the (contracted out) arts service grown, shrunk, or remained the same size since contracting out?
9. Would there be an arts service if the overall service had not been contracted out?
10. Has the arts service changed as a result of contracting out?
11. Have there been any identifiable benefits to the arts as a result of contracting out?
12. What influence does the local authority have in the management of the trust?
13. Are there any hints or tips you would give to arts officers in other authorities thinking of opting out?

## Appendix 3

### Leisure Trusts – Services Provided

Trust	Leisure/Cultural Services Undertaken
Link4Life, Rochdale	<p><b>Arts &amp; Heritage</b> including art gallery, arts development, arts education, local studies, museum, visitor services and tourist information</p> <p><b>Entertainment</b> including two multi-purpose venues</p> <p><b>Fitness and Health</b> (60 different activities)</p> <p><b>Sport and Leisure</b> (including 10 sports/leisure facilities)</p>
Luton Cultural Services Trust	<p><b>Arts and Events</b></p> <p><b>Libraries</b></p> <p><b>Museums</b></p>
Wigan Culture and Leisure Trust	<p><b>Leisure</b> including Events &amp; Activities, Parks and Countryside, Water Parks, Leisure Venues, Grounds Maintenance, Playing Field Management, Allotments</p> <p><b>Culture</b>, including heritage services and facilities, museum and museum collections, archives</p> <p><b>Tourism</b> including tourist attractions</p> <p><b>Sport &amp; Healthy Living</b> including sports development</p> <p><b>Arts &amp; Festivals</b> including arts venues</p> <p><b>Library Services</b></p>
Pendle Leisure Trust	<p><b>Sport &amp; Fitness</b> including sports facilities and 18 hole golf course</p> <p><b>Health and Wellbeing</b> including leisure facilities</p> <p><b>Arts &amp; Entertainments</b> including arts development and venues</p>
Cultural Community Partnerships, East Northamptonshire	<p><b>Arts &amp; Heritage</b></p> <p><b>Sports Development</b></p> <p><b>Functions including facilities</b></p>
Greenwich Leisure Limited	<p><b>Leisure Centres</b> - 70 centres across 13 London boroughs and three out-of-London authorities</p>

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