

COMMITTEE: REGENERATION AND CITIZENSHIP SCRUTINY

DATE: 15 MARCH 2007

SUBJECT: TRUST STATUS FOR CULTURAL SERVICES

REPORT BY: HEAD OF LEISURE AND COMMUNITY

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IMPLICATIONS:

LEGAL	✓	COMMUNITY SAFETY	
EQUALITIES	✓	ENVIRONMENT	
FINANCIAL	✓	CONSULTATIONS	✓
STAFFING	✓	OTHER	

WARDS AFFECTED: ALL

PURPOSE

- 1 To consider options relating to the transfer of a range of cultural services to not for profit distributing organisations, commonly known as trusts.

RECOMMENDATION

- 2 Regeneration and Citizenship Scrutiny Committee is recommended to consider the options identified in this report and forward its comments to a future meeting of the Executive.

BACKGROUND

- 3 The Council has some experience in transferring services to trusts. In particular, in this general field of activity, the Council transferred its sport and physical recreation services to Active Luton in November 2005. This Committee received a report on Active Luton's performance to date last October.
- 4 As a result of the budget process in February 2006, it was proposed to create a museums trust in the early part of financial year 2007/08. This proposal was confirmed by the Executive at its meeting on 11 December 2006. The Executive is due to consider detailed arrangements for the transfer of the museums service on 10 April.
- 5 As part of the budget process most recently undertaken, further proposals have been made to transfer both the arts service and the library service to trusts later in 2007/08. Although there is no formal commitment, the expectation is that these services would be transferred into the same vehicle as the museums service, creating a broader cultural services trust.

REPORT

- 6 The transfer of this Council's cultural services to a trust is now driven by a desire on the part of the Executive to **protect** and **enhance** those services, which are, for the most part, discretionary provision, at a time when there is considerable financial pressure arising from statutory service provision and other significant priority commitments.
- 7 The notion of transferring council services into trusts is not new, but has grown considerably over the past twenty years. In the cultural sector, the Sport and Recreation Trusts Association (SpoRTA) currently has a membership of over 110 leisure trusts from all parts of the UK. Together those trusts have a combined annual turnover in excess of £500 million, have over 118 million customers visiting their facilities each year and employ over 13,000 full time employees. Originally set up to support Sport and Physical Recreation trusts, SpoRTA also has wider cultural service trusts in membership and increasingly uses its acronym rather than its full name to reflect this. Consequently, there is now a wealth of information, experience and support available to ensure that Councils make decisions which are based on best practice, but which reflect the local environment.

- 8 The range of council cultural services which have been outsourced to trusts has grown from its sport and physical recreation base and now includes a much wider range of cultural services, including museums, libraries and arts services. Indeed, the Museums Libraries and Archives Council (MLA) produced a report last year to inform Councils considering such transfers. Multi service trusts are common, for example both Wigan and Hounslow include libraries, arts services and museums within their cultural services trusts. This Council is progressing the transfer of its museums service to a trust and thus it is opportune to consider the benefits of extending this approach to its other cultural services, in particular, the library and arts services.

Commissioning

- 9 A strong relationship between the trust and the Council is a critical success factor. It is engendered through a clear understanding of each organisation's role. The relationship has been traditionally that of client/contractor, based upon the trust delivering against a range of outputs identified by the Council. However, this Council, in common with others, is seeking to develop a stronger strategic commissioning role and thus moving away from a client based focus. Consequently, the Council will define a set of clear outcomes that it wishes to deliver, they can assess what local needs must be met to produce those outcomes and thus **commission** the delivery of cultural services by a trust which will meet those local needs.

Implications of Transfer

- 10 There are a number of implications of transfer, many of which benefit both the local authority and the organisation to which the services are transferred. Some of the key implications are noted below.
- The potential for immediate financial savings, usually through the mandatory rebate from National Non Domestic Rates (NNDR - business rates) and through Value Added Tax (VAT) savings¹.
 - The ability for the trust to source external funding not available to local authorities.
 - The retention of staff terms and conditions, including local government pension arrangements.
 - The ability to cultivate corporate and personal giving.

¹ The impact of VAT savings is a complex matter, may not be particularly significant and for each transfer a separate calculation would need to be made.

- The stability to enable a sense of direction and effective strategic planning and a focus on the core business of the trust.
- The development of new connections and partnerships.
- The skills brought into the business by trustees or Board members.
- A management structure that enables a faster and streamlined decision making process, enabling timely decisions.
- A new and informed relationship between the Council and the trust facilitating the delivery of the Council's wider objectives (eg learning, economic development, environment, community well being and safety, health, etc) through the trust (see "Commissioning" above).
- A clear performance management framework based upon the agreement between the Council and the trust.
- An opportunity for cultural change in the transferred services.
- The protection of cultural assets, which remain the property of the Council, for the benefit of the Council's community of interest through a sustainable framework and based on funding arrangements that create stability for planning and development. The Council retains a responsibility for the maintenance of these assets.
- The ability to seek better value and service in key support functions (this **may** not be a benefit to the Council or its retained workforce – see below).
- The ability to invest trading income to improve services (this **may** not be a benefit to the Council – see below).
- The ability to transfer other services into an established trust.
- Retaining direct community involvement and reflecting the local community in the transferred services through membership of the Board.
- Established trusts can tender for neighbouring authorities work, reducing unit costs.

- The Council may lose control of the management of the services transferred. It can nominate trustees or Board members, but these must number less than 20% of the Board and, in any event, as trustees must owe their first duty of care to the trust.
 - There may be an impact on the Council's central support services if the trust chooses to seek those services elsewhere.
 - The benefit to the Council from a trust's positive financial performance accrues only when new funding agreements are negotiated.
 - The Council must recognise that trust operations will contribute to its Comprehensive Performance Assessment (CPA) and any future performance regimes.
- 11 Both the Council and the trust will want also to ensure that they guard against potential difficulties relating to eg: cash flow; management capacity; changes in the ability of the Council to fund; and limited opportunities for the trust to grow. However, as with Active Luton, all of these issues need to be recognised and, as far as possible, the agreements between Council and trust are written to mitigate against those difficulties.
- 12 Given the implications identified above, it is considered that if cultural services are to thrive in Luton, then trust status provides those services with the very best option for future protection and enhancement.

Current Position

- 13 Work to progress a museums trust with a target date for transfer of 1 July is continuing with the support of engaged consultants and a cross Council officer project board. The work required is significant, but current indications are that the target can be met.
- 14 In working with our consultants, it has become apparent that the scale of transfer of the museums service alone will give rise to a number of problems pending the future transfer of the other two services. In particular, these relate to the composition of the Board; the need for additional management support, particularly in terms of finance; additional consultancy costs in respect of the future transfers; and the risk of the museums trust being reluctant to accommodate the future transfers.

- 15 Officers are currently working on the feasibility of effectively delaying the transfer of the museums service and accelerating the transfer of the other services. This would result in the transfer of the museums, arts and library services at the same time to a single cultural services trust later in the year, probably in December, generating the necessary expected financial benefits. This approach would overcome the concerns noted above and would have the added benefit of the new organisation having clarity of purpose from its inception.

OPTIONS

- 16 The Council is already committed to the transfer of the museums service to trust status with the financial benefits built into next year's budget. There is also a commitment to realise financial benefits next financial year from transferring the arts and library services to trust status. Consequently, there are two options to progress transfer and a third should some or all of the services not be transferred. These are noted below.
- i Transfer the museums service on 1 July 2007 and the arts and library services on 1 April 2008.
 - ii Transfer the museums, arts and library services on 1 December 2007.
 - iii Identify alternative budget savings to the benefits realised by transfer.
- 17 The Committee is invited to consider these options and forward its views to the Executive for further consideration.

LEGAL IMPLICATIONS

- 18 The financial constraints on the Council mean that the development of some services may be constrained unless effective alternative funding is obtained. The services in question are capable of transfer into an independent charitable body which could benefit from gift aid from London Luton Airport Limited. If the Executive consider that this transfer is likely to achieve the promotion or improvement of the social wellbeing of the Borough, they have power to incur expenditure to undertake this process under section 2 of the Local Government Act 2000. These implications have been agreed with the relevant solicitor in Legal Services on 8 March.

STAFFING IMPLICATIONS

- 19 Consultation with museums staff has been undertaken and arrangements will be made to begin consultations with staff in the other affected services and will continue throughout the process. Staff in the museums service have selected a representative to participate in the officer project board and the trade unions are also represented. Staff will be protected through the Transfer of Undertakings and Protection of Earnings regulations (TUPE).

EQUALITIES IMPLICATIONS

- 20 The three services have developed a good reputation in reflecting the diversity of the community in its users. An equalities impact assessment (EIA) of the museums service has been conducted to ensure that any necessary action is identified to address any disproportionate impacts upon staff and customers as a result of the proposed transfer. Other EIAs will follow in respect of the other two services.

FINANCIAL IMPLICATIONS

- 21 A sum of £150k has already been allocated from resourcing transformation to fund the specialist assistance and other work involved with the process. It should be noted that significant financial input will be required from both Housing and Community Living and corporate finance to prepare a trust business plan.
- 22 The trust will require its own separate accounting, internal controls and governance structure. Meanwhile, the council may bear some additional costs in respect of commissioning outcomes from the trust and monitoring its performance.
- 23 There are various complex issues surrounding the configuration of a trust that impact on the VAT. The consultants will advise on the most appropriate way to configure a trust to obtain the most cost efficient model, ie maximising any advantage and minimising the disadvantages.
- 24 The way support services are supplied to the trust will also need to be considered to ensure that the cultural services receive effective value for money services, whilst the Council is not disadvantaged with additional cost.

- 25 In order to achieve the budgeted saving of £476,000 in 2007/08, the museums trust would need to be funded by London Luton Airport Limited by gift aid and set up by 1 July 2007, whilst the library and arts services would need to be transferred into the trust by 1 April 2008. Alternatively, the savings can be achieved by setting up a combined cultural services trust by 1 December 2007. If this is not achieved, other savings (currently not identified) would have to be found. This report has been agreed by the Finance Manager (Housing and Community Living) on 7 March.

CONSULTATION IMPLICATIONS

- 26 As noted above, further consultation with affected staff is required. This report forms part of the Executive's consultation ahead of making further decisions in respect of trust status for the Council's cultural services.

APPENDIX

None

LIST OF BACKGROUND PAPERS **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

Report to Executive "Trust Status for the Museums Service", 11 December 2006.