



REPORT OF THE SERVICE DIRECTOR, YOUTH, FAMILIES AND CULTURAL SERVICES

LIBRARIES, ARTS, ARCHIVES, INFORMATION AND COMMUNITY LEARNING SERVICES: NEW OPERATING MODEL – GOVERNANCE

Purpose of the Report

1. To agree the legal form and governance arrangements for the new arm's length operating model for Libraries, Arts, Archives, Information and Community Learning Services.

Information and Advice

2. The Libraries and Archives business case, approved by Full Council at its meeting on 27 February 2014, aims to retain a sustainable network of libraries and enable the County Council to fulfil its statutory and legal duties in relation to public libraries and archives.
3. In year 3 (2016/17) of the business case it is proposed to move the Service to an arm's length operating model to generate immediate savings (£400,000 per annum) from a reduction in business rates.
4. A report outlining the full business case for the development of an arm's length operating model was presented to Culture Committee at its meeting on 3 June 2014. A further update on progress was presented to Culture Committee at its meeting on 21 October 2014.
5. An award of support from the Mutualisation Support Programme (MSP), the Cabinet Office support programme, has been made providing legal, HR, governance, financial and set up support for the new organisation.
6. Establishing the right legal form for the new body and the governance framework under which it will operate as a charity at arm's length from the Council is a key milestone in the delivery of the business case.
7. A workshop for all Members was undertaken following the meeting of the Culture Committee on 2 December 2014 to establish the most appropriate legal and governance model for the new organisation.
8. The workshop focussed on the legal and governance model, rather than the content of the contract which will be the subject of a Members' workshop in February, with a decision report presented to Culture Committee at its meeting on 3 March 2015.

9. The selection of the legal form of the new body that is appropriate for the range of cultural and learning services subject to the new arrangement needs to allow the following:
- Charitable status
 - Not for profit
 - Asset lock
 - Able to employ staff
 - Financial benefits – rate relief / lottery bidding / gift aid
 - Able to contract
 - Able to maintain a public service ethos
 - Able to develop stakeholder membership for individuals / staff
 - Able to deliver statutory and non-statutory services
 - Able to benefit non members
 - Provides limited personal liability for board members.
10. The workshop considered a range of legal forms including:
- Charitable Company
 - Charitable Incorporated Organisation
 - Charitable Trust
 - Community Benefit Society (CBS)
 - Community Interest Company (CIC)
 - Company Limited by guarantee
 - Co-operative Society
 - Partnership and Limited Liability Partnership
 - Unincorporated Organisation.
11. A score card assessment based on a disadvantages/advantages grid (see **Appendix 1**) and the criteria listed in paragraph 9, enabled Members to identify two possible options for the new organisation, a Company Limited by Guarantee and a Community Benefit Society (CBS).
12. Following the workshop further investigation and advice has been sought to clarify further which of the two forms is more appropriate.
13. Legal guidance (through the MSP) indicates that the conclusions of the workshop were correct and that either form can meet the requirements as listed in paragraph 9.
14. It is understood that it is easier to gain full charity status for a Company Limited by Guarantee than for other models.
15. A Community Benefit Society in comparison with a Company Limited by Guarantee, provides more easily for staff and individual (public) membership and has lighter regulation with less rigid accounting requirements, whilst still having the ability to gain full charitable status or exempt charitable status.

16. Although a Community Benefit Society is a less well known model, it has been the model of choice for the City of York Council and Suffolk County Council in the development of their new operating models for public library services.
17. The workshop supported the concept of increased community and individual participation in the governance and development of services, thus a Community Benefit Society provides more easily for membership although not exclusively.
18. On this basis, the Service team has concluded that a Community Benefit Society should be the preferred legal form of the new body.
19. The Members' workshop also considered the governance of the new body, in particular the form in which the board should be constituted.
20. An outline of the board was agreed and subject to further legal guidance, especially in relation to the requirements of the Charity Commission and the appropriate financial regulatory body, the following is proposed.
21. An independent board of 12 members to act as trustees and the accountable body for the conduct and strategic direction of the new organisation.
22. The board would elect an independent chair and would allow observer status to the County Council's appointed commissioning officer.
23. The 12 member board would be made up of the following:
 - Staff member (x1) – elected by all employees (all employees are members)
 - Society 'community' members (x 4) – elected by all members of the society (excluding staff) and / or 'friends' groups
 - Selected and appointed (x4) – recruited via an open process – selected by appointments panel
 - Nottinghamshire County Council (x2) - appointed – Chair of Culture and Culture opposition spokesperson
 - Ex-officio – CEO / Chief Operating Officer for the society.
24. To meet the requirements of the Charity Commission / HMRC charitable exempt status, the Financial Conduct Authority (FCA) and secure the independence of the new independent organisation the following principles apply:
 - board members will not be paid, other than reasonable expenses
 - board members are required to avoid conflicts between charitable and personal interests
 - Councillors appointed by the County Council must follow Charity Commission guidance on political campaigning
 - where a trustee is elected, or appointed, by a connected organisation or other third party, he or she must act only in the best interests of the charity in carrying out their trustee role
 - board members may be charity trustees by law, and therefore responsible for ensuring that the society complies with the requirements of charity law

- board members minimum age 16 years
 - board membership maximum 12
 - board tenure will be developed to facilitate a 1/3 stand down each year
 - the staff board member is elected via one staff member one vote by permanent staff employed at the time of the election
 - co-opting board members will be allowed in the shadow period and on ongoing basis to meet specific needs of the board or fill gaps during the normal selection cycle
 - society 'community' members (individuals and friends of groups) will be elected via one 'society' member one vote.
25. The arm's length operating body will be established during 2015, with a shadow board established by July 2015.
26. Establishing a name of the new organisation is required. The working title in relation to the support from the Cabinet Office and the required business plan is 'Inspire – Culture and Learning Nottinghamshire'.
27. Therefore work will be undertaken including market analysis and testing to establish the registered name of the new organisation.

Other Options Considered

28. Options for the type of legal form are detailed in paragraph 10.

Reason/s for Recommendation/s

29. To agree that a Community Benefit Society be the legal form for the new arm's length operating organisation for Libraries, Arts, Archives, Information and Community Learning Services.
30. To agree the outline format of the board to provide the governance for the new organisation.
31. To approve an approach to the naming of the new organisation.

Statutory and Policy Implications

32. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Implications for Service Users

33. The development of an alternative operating model will increase customer engagement. The Council will continue to decide the delivery model, standards and overall priorities of the services through its contract with the new body. A detailed process of stakeholder,

customer and community engagement will be required in the formation of the alternative operating arrangements.

Financial Implications

34. The move to an alternative form of governance through the formation of an arm's length body will enable the service to make the proposed level of savings in 2016/2017.
35. Work is underway to establish and quantify the relevant set up costs, but they are not known at this time. When this work has been completed a further report will be submitted. Any costs incurred in the meantime will be met from within existing resources where possible.
36. Increased access to grant funding will be facilitated once the service is not directly delivered by the County Council.

RECOMMENDATION/S

That:

- 1) a Community Benefit Society be agreed as the legal form for the new arm's length operating organisation for Libraries, Arts, Archives, Information and Community Learning Services.
- 2) the outline membership and principles for the new organisation's board, as outlined in the report, be agreed as the basis of registration with the Charity Commission and the relevant financial bodies.
- 3) the approach to the naming of the new organisation, as outlined in the report, be agreed.

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Constitutional Comments (AK 23/12/14)

37. The Culture Committee has delegated authority within the Constitution to approve the recommendations in the report.

Financial Comments (SS 22/12/14)

38. The financial implications of the developments, where known, are set out in paragraphs 34 to 36 along with the limitations of current knowledge.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Libraries and Archives Business Case B13 – report to Full Council on 27 February 2014.

Libraries, Arts, Archives, Information and Community Learning Services: Future operating model - report to Culture Committee on 3 June 2014.

Libraries, Arts, Archives, Information and Community Learning Services: Future operating model update on progress – report to Culture Committee on 21 October 2014.

Electoral Division(s) and Member(s) Affected

All.

C0544