

9 June 2015

Agenda Item: 9

REPORT OF THE ACTING CORPORATE DIRECTOR, CHILDREN, FAMILIES AND CULTURAL SERVICES

CULTURE, LEARNING AND LIBRARIES SERVICES – ENTERING INTO LEGAL AGREEMENTS

Purpose of the Report

1. This report seeks approval for the intended award of a contract to a charitable community benefit society ("the Society") established to operate a range of cultural services on behalf of the County Council.

Background

2. Revenue budgets for the County Council's cultural services portfolio have reduced significantly in recent years as a direct result of public sector funding pressures. For example, the base revenue budget of the Libraries, Archives and Information Service has reduced by 40% in the period since 2009.
3. With budget pressures set to remain a major factor for public sector services for the foreseeable future, the ability of the Council to continue to secure the long term future of its discretionary but important cultural services is questionable, unless innovative new ways of working can be identified and delivered.
4. With this in mind, Full Council, at its meeting on 27 February 2014, approved a business case to develop an arm's length organisation to generate revenue budget savings of £375,000 per annum from a reduction in National Non-Domestic Rates (also known as business rates) arising from the operation of the County Council's network of 60 library premises. These savings were increased to £475,000 per annum by Full Council at its meeting on 26 February 2015.
5. A report outlining the full business case for the development of an arm's length operating model to manage libraries, archives, records managements, adult and community learning and arts, was presented to Culture Committee at its meeting on 3 June 2014 and a further update on progress was presented to Culture Committee on 21 October 2014.
6. The business case aims to deliver the Council's vision for these services, which is that:

"To be at the heart of Nottinghamshire communities and community life by:

- Inspiring the enjoyment of books and reading

- Creating knowledge and skills through access to learning, information and heritage
 - Stimulating and encouraging arts and cultural activities”
7. An award of support from the Cabinet Office’s Mutualisation Support Programme was subsequently provided. This has helped provide legal, HR, governance, financial and other set-up support in creation of the arm’s length organisation.
8. A workshop for all Members was undertaken following the meeting of Culture Committee on 2 December 2014 to establish the most appropriate legal and governance model for the new organisation.
9. Members subsequently agreed at the meeting of Culture Committee on 13 January 2015 that:
- a Community Benefit Society be agreed as the legal form for the new arm’s length operating organisation for Culture, Learning and Libraries Services.
 - 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.
10. A further workshop was held with Members on 9 February 2015 to develop the key principles behind the contractual arrangement that would need to be established between the Council and the Society in order to govern the relationship between the two organisations. The main points of the proposed contracting model are described below.

Information

11. Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972.
12. Having regard to all the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because the information would add a limited amount to public understanding of the issues but would significantly damage the Council's commercial position.
13. The exempt information is set out in the Exempt Appendix.

Business Case

14. A review of the business case has shown that the £475,000 proposed revenue budget savings will be achieved.

Legal Implications

15. Legal advice is set out in the exempt report.

Summary of Contract

16. The Council has reached a position through negotiation with the Society whereby the material commercial principles and associated drafting has been agreed but further clarification is required in relation to three areas (see exempt appendix). Matters of detail and fine tuning of the documents remains to be completed.
17. Careful considerations around the relationship of the Society with the Council, commissioning and performance management, retention of commissioning capacity, reputation and external perception have influenced decisions around the final proposed scope of the contract. The principle of the arrangement is that the Council lays out what it wants the Society to provide and the budget allocation. As now, annually the Council will determine the budget to be allocated. If the Council wishes to change the service budget or priorities it can do so and the Society will advise on the implications and the best approach to deliver the revised service and any costs associated with this.
18. **Contract duration:** Service delivery will commence from 1 April 2016. It is proposed the contract duration is for an initial 5 years with a potential extension of up to 5 years. There is a mutual right to terminate the contract (without fault) upon 12 months' notice in whole or in part. Where a party exercises this right it is responsible for the other party's costs and losses arising from such termination. In the event of major performance failure by the Society, the contract can be terminated at any time. The contract contains detailed definitions as to what constitutes a major performance failure. After 5 or 10 years the Council can choose to bring the services back in-house or seek to market test the arrangements.
19. **Scope:** The scope of the contract includes all Libraries, Archives, Adult and Community Learning Services and Arts Development. In addition, the Children and Young People's Committee agreed on 18 May 2015 for the inclusion of Arts and Music Services for young people within the proposed scope of services for the contract.
20. **Statutory duties:** The Council will retain its current statutory duties in respect of the services to be delivered via the new organisation. The contractual arrangement will require the Society to carry out prescribed activities on the Council's behalf through the contract.
21. **Performance measures:** Detailed performance indicators will be included within the contract, as part of a comprehensive performance management and contract monitoring regime that will set and monitor attainment against key performance targets. Performance reports will be brought to Committee on a quarterly basis, as at present.
22. **Buildings:** Where the Council owns the buildings to be used under the contract it will give a lease to the Society. Where the Council currently has a lease on the building to be used under the contract then the Council will look to give a sub-lease or licence to the new organisation. The length of the leases, sub-leases or licences will be for the same period as the contract.

23. **Assets:** The Society will be required to have an asset lock whereby any assets that are sold by it will need to be used to help develop culture and learning in Nottinghamshire. Details of the assets and ownership during the contract are detailed below:
- Books and furniture will transfer to the Society at the start of the contract for a nominal sum. The Society will refresh the bookstock and furniture during the contract, as appropriate, and return these to the Council for the same nominal sum at the end of the contract;
 - Archive and records deposits will remain in Council ownership – as direct owner or custodian for the depositor;
 - IT equipment will remain in Council ownership and be part of the Council's wider refresh programme. Appropriate licence arrangements will be obtained;
 - Vehicles will remain in Council ownership and be part of the Council's capital replacement programme.
24. **Libraries/archives fees and charges:** As at present, any changes to fees and charges for Libraries and Archives will need to be agreed by the Council on an annual basis. Fees and charges for other services will be at the discretion of the Society unless the levels are stipulated by grant funding bodies.
25. **Grant funding:** Current contracts for Adult and Community Learning Services with the Skills Funding agency and Education Funding Agency will continue to be held by the Council but delivered through the Society. The Council will therefore retain its current responsibilities for adult and community learning under Ofsted's single education inspection framework. The Council will seek to novate (transfer) other grant funding contracts to the Society.
26. **Central Support Services:** Service level agreements are being developed to describe how the Society will receive support services from the Council (such as ICT, HR etc) in the future. These will be finalised at least three months before the contract starts. The support services provided will be reviewed which may result in the Society testing the market for the services it requires.

Other Options Considered

27. Retaining the services in-house was considered. However, this would not deliver the business case without significant reductions in some services within the scope of the contract. Further detail is contained in the Exempt report.

Reasons for Recommendations

28. It is anticipated that the proposed contractual arrangement will:-
- Deliver the business cases approved by Full Council on 27 February 2014 and on 26 February 2015 and continue to protect the front-line services within the scope of the contract;
 - Provide the Council with control against a detailed service specification;
 - Ensure that the Council continues to retain control of its spend on the services;

- Maximise opportunities for innovation and efficiencies by engaging staff and service users in the future direction and delivery of the services;
- Enable the service to maximise opportunities to access other sources of funding through its charitable status;
- Enable the Council to ensure there is an appropriate asset lock or retention of key assets.

Statutory and Policy Implications

29. 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.
30. The Council is a local authority with responsibility for providing a comprehensive and efficient library service within its area for its residents or those who work within the library area of the Council pursuant to section 7 of the Public Libraries and Museums Act 1964. In addition, pursuant to the Local Government (Records) Act 1962, the Local Government Act 1972 and the Nottinghamshire (City of Nottingham) Structural Change Order 1996 the Council is an archive authority with relevant duties to provide archives and the Council is a local authority with responsibility for providing a suitable repository of local public records pursuant to section 4(1) of the Public Records Act 1958.
31. The Council will retain its statutory duties under the contract and require for these to be discharged through the Society.

Implications for Service Users

32. The Council's continuing commitment to the retention of a comprehensive libraries network coupled with the commissioning of service delivery as set out in this report, means that the services for Nottinghamshire residents will be offered reasonable protection and provided with long term sustainability within a context of long term reductions in public sector funding.

Financial Implications

33. The contract sum will be for approximately £10 million per year. In addition there will be contract/grant funding from the Skills Funding Agency, Education Funding Agency and Arts Council England. This funding will vary on an annual basis and therefore the contract will have flexibility for the Council to agree with the Society the funding that will be available to it for the delivery of services linked to the funding.
34. The Council would be expected to ensure the conditions of grant funding continue to be met and provide financial guarantees to the Skills Funding Agency, Education Funding Agency and Arts Council as part of these conditions.

35. It is expected that the Society will seek admitted body status so that existing staff can continue to be part of the Local Government Pension Scheme. New staff will join a pension scheme to be set-up by the Society.
36. The S151 Officer has agreed that a Pension Bond normally associated with the risk of increased pension costs is not required. The S151 Officer has agreed this as the Council is capping the discretionary benefits of the Society to the level of the Council. If a Pension Bond was required, this would be reflected in an increased contract fee.
37. Transition costs are currently being established and confirmed, and will cover items such as:
 - Pensions costs (these will initially be higher but will reduce with turnover of staff)
 - IT systems transitions
 - HR/payroll transitions

These costs are expected to be in the region of £300k. Where possible, these costs will be met from in year savings/ reserves generated or held across the cultural services group in 2015/16. Where this is not possible, additional costs of up to £150k will be met from within the overall CFCS budget.

Public Sector Equality Duty Implications

38. The operating contract requires the successful bidder to comply with all current equal opportunities related statute and implement effective equality and diversity policies that meet Council requirements.
39. As part of the process of making decisions and changing policy, public authorities are required by law to think about the need to:
 - Eliminate unlawful discrimination, harassment and victimisation.
 - Advance equality of opportunity between people who share protected characteristics (as defined by equalities legislation) and those who don't.
 - Foster good relations between people who share protected characteristics and those who don't.
40. Equality Impact Assessments (EIAs) are a means by which a public authority can assess the potential impact that proposed decisions/ changes to policy could have on the community and those with protected characteristics. They may also identify potential ways to reduce any impact that a decision / policy change could have. If it is not possible to reduce the impact, the EIA can explain why. Decision makers must understand the potential implications of their decisions on people with protected characteristics.
41. An EIA has been undertaken and is available as a background paper. Decision makers must give due regard to the implications for protected groups when considering this report.

Human Resources Implications

42. The Society will accept the transfer of existing employees with protection under the Transfer of Undertakings (TUPE) regulations. The number of staff transferring is approximately 520, but as a number of these posts are part-time the full time equivalent number of posts is approximately 320. Final details of the staff transferring will be agreed prior to the start date of the new contract.
43. TUPE regulations will be complied with and current terms and conditions of employment will be protected in accordance with the TUPE Regulations 2006 (and amendments).
44. The Living Wage: The Council adopted the Living Wage for direct employees from April 2014. The Living Wage will continue to be protected under TUPE for transferring staff.
45. A number of briefing sessions have taken place with the Service staff and a set of frequently asked questions made available to respond to staff enquiries. Full communications and consultation will continue to take place with those employees affected and with the relevant trade unions, in respect of the planning and implementation of the transfer of employment.

RECOMMENDATIONS

- 1) That Culture Committee approves the intended award of the contract to the Society with delegation of authority to the Acting Corporate Director, Children's, Families and Cultural Services, in consultation with the Group Manager for Legal Services and Section 151 Officer, to enter into the services contract and all other documentation required to give effect to this decision or to protect the Council's position provided no material facts changes, the financial envelope and key commercial parameters remain the same .

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Constitutional Comments (AK 28/05/15)

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

Financial Comments (SS 28/05/15)

47. The financial implications of this report are contained within paragraphs 33 to 37 above.

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.

Annual budget 2014/15 – report to Full Council on 27 February 2014

Libraries, 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 – new operating model – progress report – report to Culture Committee on 21 October 2014

Libraries, Arts, Archives, Information and Community Learning Services – new operating model – governance – report to Culture Committee on 13 January 2015

Arts and Music Services for Young People: new operating model – governance – report to Children and Young People's Committee on 18 May 2015

Equality Impact Assessment

Electoral Division(s) and Member(s) Affected

All.

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