Creation of a Trust for all Leisure Centre Sites

Externalising Leisure Services

A 2006 report by the Audit Commission (Public Sport and Recreation Services: Making them Fit for the Future) did not clearly identify any one management model as offering better value for money or more investment or higher levels of usage. However, it did find that in-house services tend to be significantly more expensive than the alternative externalised options and this was becoming more marked over time.

Benchmarking analysis carried as part of the report indicated that private sector operators required lower net subsidies than in-house or trust operations. The analysis suggested that the cost of providing leisure services is significantly lower with privately contracted services than with trusts or in-house management. However there were no noticeable differences in the quality of services, the amounts of investment nor the levels of usage of facilities managed in house, through trusts or by private sector operators.

The analysis suggests that solely on cost grounds private sector managed facilities operate more efficiently than in house or single contract trusts. This is supported by the fact that private sector operators manage many more centres than in-house teams or trusts and therefore can bring significant economies of scale.

London Borough of Barnet Background

The SPA outline business case approved at the policy and resources committee on the 21st July 2014 called for the project to do some work on the practicalities of setting up a Trust to manage the Copthall site. In addition members asked officers to also consider whether a Trust model would be a suitable vehicle to manage the whole of the Councils leisure centre estate. There is a parallel project underway to consider the future management of the authority's parks and green spaces, both this project and the SPA project will also need to consider a wider Trust that could manage both assets.

This paper is the starting points for considering the types of Trust governance that exist to provide a framework to carry out this type of management and a broad look at the costs and timescales involved in setting up a trust and transferring responsibilities into it.

The information used is drawn from discussions within Barnet as well as with the London Borough of Ealing, Active Newham, Vision and SPORTA. Two other documents are also referenced; A guide to Externalising Leisure Services (published in March 2011) and Trusts for the Big Society from Winckworth Sherwood.

Types of Trust

Barnet's Leisure centres are currently managed by a Trust. GLL are a charitable social enterprise managed by a board of Trustees drawn from customers, council members and employees. In terms of Trust types they are an Industrial and Provident Society (number 4 below).

There most suitable types of Trust model are probably from number 4 down.

1. **A Body Established by Royal Charter –** To receive a Royal Charter an application must be considered by the Privy Council and is usually reserved for substantial organisations with a clear public purpose

2. **An unincorporated Association –** This does not have limited liability and is suitable for a small charity, such as a village hall, with a wide membership and management by a small committee of volunteers.

3. **Declaration of Trust –** Charities created by a declaration are unincorporated and therefore generally unsuitable for local authorities activities as the trustees have unlimited liability.

4. **Industrial and Provident Society (IPS) –** An IPS must be established for 'community benefit' and could be either charitable or non-charitable. Each member has at least one share in the society and control is vested in the members equally and not in accordance with their financial interest in the society. Liability of members limited to the extent of their shareholding

5. **Company Limited by Guarantee (CLG) –** This is the usual vehicle for creating a leisure based charitable trust. The trust will be incorporated under the Companies act 2006 and gives limited liability rights. The directors of this type of trust have duties and responsibilities under the Companies act and they will have additional duties as trustees.

6. **Community Interest Company (CIC) –** this is a new type of company created in 2004 by the Companies (Audit, Investigations and Community Enterprises) Act. An organisation cannot be a CIC and a charity and therefore (like non charitable IPCs) would not be eligible for the tax reliefs available to charities.

7. **Charitable Incorporated Organisation (CIO) -** Even newer than the CIC, the CIO was introduced by the 2006 Act. It is regulated entirely by the Charity Commission – not the Companies Registry – and reduces the administration burden on charities. Existing charities are able to convert to CIOs

Conclusions on Trust Types

Management of sports and recreation facilities through a trust has become a popular choice for councils, with approximately 90 trusts now running sports and recreation facilities. This now represents 21 per cent of all council provided facilities in England. Most trusts are companies limited by guarantee (67 per cent) or industrial and provident societies (24 per cent)

Included below is a summary of advantages and disadvantages taken from the Ealing, Harrow, Brent Leisure Procurement Full Business Case showing the advantages and disadvantages of IPCs and CLGs

Company Limited by Guarantee	***Industrial and Provident Society***
Features ○ *Governed by Memorandum and Articles of Association that can be amended by 75% Majority at a general meeting.* ○ *Two tier management structure. A board of directors exercise 'day-today' control. Company members exercise 'residual' control through general meetings.* ○ *Member's liability limited to the extent of the guarantee (typically £1)*	***Features*** *Corporate body governed by its rules* ○ *Registered with the Registrar of Friendly Societies in accordance with the Industrial and Provident Societies Act 1965* ○ *Liability of members limited to the extent of their shareholding (typically £1)* *Governed by a committee which is equivalent to a company board*

Advantages ◦ *Most common and best understood form of leisure trust* ◦ *Swift registration procedure* ◦ *Flexible voting arrangements can be used* ◦ *Broad company membership base can be used to involve community stakeholders*	***Advantages*** *Ideal vehicle for the formation of a co-operative* *A charitable industrial and provident society does not have to register with Charity Commission*
Disadvantages ◦ *Registration as a charity can be time consuming and brings with it additional scrutiny*	***Disadvantages*** ◦ *As a rare constitutional entity may find borrowing/attracting investment difficult* ◦ *Lengthy registration procedure requiring the need to satisfy the Registrar of special reasons for creating an industrial and provident society rather than a company* ◦ *Registration fees substantially more expensive than for a company* ◦ *Complex to administer*

Setting up Process

Commissioning Process

The transfer of assets to a new trust involves setting up a shadow trust which then negotiates with the local authority to take over the management and operation of any assets and provision of services. Trustees are recruited, possibly from the local community and / or other stakeholders, to sit on the Board of the Trust, The Trust can apply for charitable status from the charities commission and once agreement has been reached with the local authority the formal transfer takes place, including a TUPE transfer of staff.

A summary of the commissioning process is set out below:

- Feasibility & Preparation
- Set Up Shadow Trust
- Trust Business Plan Preparation & Evaluation
- Negotiations of Funding Agreement & Leases
- Trust Approval & Agreement Signature
- Transfer Services & Commence Agreement

The commissioning process should take around **12 months** from the decision to go down the new trust model to contract signature, with a short period of mobilisation prior to transfer of the services. Around **3 months** should be allowed for at the beginning of the process to allow time to confirm setting up a new trust is the best route, to prepare the contractual documentation and to appoint external advisors to support the in house team.

While these timeframes are possible the experience of Ealing Borough Council in creating a trust for Pitzhanger Manor and Gunnersbury Park (a CIC) took 4 years to be finalised.

Ownership of the assets transferred usually remains with the local authority, which grants a long term lease to a trust (typically 25 years) together with a **rolling grant funding agreement, usually lasting 3 - 5 years.**

Setting up Costs

Set up costs are much higher than for outsourcing and are estimated at **£100k - £150k, excluding internal costs and officer time which are likely to be significant as the process can be much more time consuming than outsourcing.** The cost can be higher if the authority has to recruit staff to work for the shadow trust during negotiations.
The set up and transfer process can take up to 12 months to complete.

Procurement Issues

There is conflicting advice on this issue. The risk is around compliance with EU procurement rules when the provision services are transferred into a Trust rather than a transfer of assets. SPORTA believe that an authority should be extremely cautious highlighting scenarios amongst its members where a trust has been created and then had to bid to provide the services that it was created to deliver.

An alternative view is that the council can transfer assets into the trust and that the services associated with these assets a simply absorbed by the trust.

Recommendation

Based on the above, how would this model translate for all the council's leisure centre sites

Either a CLG or the newer CIC and CIO could be a suitable vehicle for managing the Barnet leisure centre sites. The five sites are currently managed by a Trust, GLL, so the potential for savings from NNDR and VAT could be limited.

The re-procurement of the existing GLL arrangement has a high probability of delivering a zero subsidy contract from day one of any new arrangement. The source documents referred to above recommend that any new Trust attracts grant funding (management fee) for the early years of their existence (perhaps five).

In the case of Active Newham the grant funding was £2m per annum. The trust was set up with a commitment to reduce this by £300k every year for the first three years.

There would be a cost for setting up a trust, perhaps £150k and then ongoing running costs. Initially the trust would need support from the council for HR, finance and IT systems and trustees would need to be recruited and appointed, taking time perhaps 12 months.

The advice from both Vision and SPORTA was that a procurement competition among existing trusts would give the best long term value. The trust model might suit a longer term strategy that might start with leisure centres but grow into parks, libraries and culture.

Recommendation – Both financial and non-financial benefits would be better for the council if the management contract for the five leisure centres were tendered rather than a single authority trust created.