



The establishment and use of arms length service delivery arrangements

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Arms length or out of reach?



Scotland - Public spending context



- General Election.
- Between 15% and 30% public spending cuts over the next 4 to 5 years.
- £35bn reduction in the budget for Scottish public services over the next 15 years – Fraser of Allander Institute, Strathclyde University.
- PWC Edinburgh – “Councils need to reduce their costs over the next few years by 25% to help address their funding constraints.”

Arms length not the only approach.....



- Joint local authority management structures.
- Reorganisation of local authorities.
- Expenditure freeze.
- Outsourcing – CBI and private sector solution.
- Competitive dialogue.
- Insourcing – APSE report.
- Total place.
- Shared services/joint working.
- In-house Service Improvement Plan – APSE’s Competitiveness Continuum.
- LEAN/Systems/Six Sigma approach – Improvement plan linked to competitiveness and efficiency.
- Or arms length.....

What is the business case for arms-length – Key questions



- What are you trying to achieve and why?
- What can an arms length service delivery vehicle do that you cannot do in-house?
- How can arms-length service delivery demonstrate accountability and transparency?
- What is the long-term strategic vision for public service delivery and how can arms-length service delivery achieve that vision?

Understanding the drivers for arms length services



- Politics and ideology.
- Audit and inspection.
- Competition and preventing outsourcing.
- Commissioning – the new client/contractor split.
- Efficiencies and public spending cuts.
- Access to external trading opportunities.
- Access to Investment????

Types of arms length arrangement



- Arms Length Management Organisations (ALMOs) – Housing only.
- Leisure Trusts – Charitable status/NNDR benefits.
- Housing Stock Transfer Companies – Not for profit Registered Social Landlords.
- Wholly owned trading companies – England only S.95 LGA 2003.
- Partly or jointly owned trading companies – Joint ventures.
- Wholly owned service delivery companies – Teckal companies.
- Partly or jointly owned service delivery companies.

Legal Form of Delivery vehicle



- Company limited by shares or guarantee
- Not for profit organisation
- Limited Liability Partnership
- Charitable body
- Unincorporated association
- Joint Board/Committee – S.56 Local Government (Scotland) Act 1973

Examples of arms length arrangements



- ‘Teckal’ Service delivery companies – Solutions SK (Stockport MBC), Swindon Commercial Services (SCS).
- Limited Liability partnerships – City Building (Glasgow).
- Joint Venture Company – North Lanarkshire JVCo with Morrisons.
- Trading Companies – Norse (Norfolk County Services).
- Joint Board/Committee – Tayside Contracts.

Competition and state aid issues



- EU Procurement Directive – The Public Contract (Scotland) Regulations 2006.
- Teckal exception - Teckal Srl and Comune di Viano, Azienda Gas-Acqua Consorziata (AGAC) di Reggio Emilia (Case C-107/98) allows for the granting of contracts without competition where “the local authority exercises over the person concerned a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling authority”
- State Aid Rules – Apply to organisations involved in economic activity (undertakings)
- Competition Act 1998.

State Aid – 5 Key questions



1. Is the measure granted by the state or through state resources?
2. Does it confer an advantage to an undertaking?
3. Is it selective, favouring certain undertakings?
4. Does the measure distort or have the potential to distort competition?
5. Is the activity tradable between member states?

Trading and charging



- Section 8 of the Local Government (Scotland) Act 2003 (LGSA 2003) amends the Local Authorities (Goods and Services) Act 1970 (LAGSA1970) so that the external agreements to which it applies relate only to trading operations, and defines those trading operations as those for which, under proper accounting practice, the local authority must keep trading accounts.
- Within Scotland the volume of trading is subject to limitation for work using the 2003 Act powers, however the limit remains to be set by the Scottish Government.
- Charging is effectively rolled into provisions contained with the Trading provisions in Scotland.
- Explanatory note 26 to the LGSA 2003 – Trading with other public bodies restricted to “surplus capacity”.
- Lobbying - APSE commissioned Evershed’s legal opinion and subsequently confirmed by Scottish Government that “surplus capacity” rule does not apply.



Other issues

- Freedom from council financial and other restrictions
- Tax advantages
- Protection from risk
- Avoidance of liability for future claims under equal pay legislation

Decision making and financial freedoms?



- Ability to make decisions quickly.
- Need for accountability and transparency.
- Corporate costs (Central Establishment charges).
- Ability to borrow for investment – limited for a wholly owned company.
- Ability to trade outside of the Council – little or no evidence.

Tax advantages – are there any?



- Corporation Tax liability
- Can an arms-length vehicle benefit from the Council's exemption.
- Distribution of dividends and profits.
- Reduced charges.
- VAT



Protection from risk

- Company law – limited liability.
- Commercial purpose.
- Responsibilities of company Directors.
- Reputational risk to the Council of risk based trading activity.
- Impact on core services – purposes.

Avoidance of other liabilities



- TUPE/TUPE+ - transfer rights for employees.
- Pensions.
- Equal pay and equal value.
- Working with the trade unions.

Conclusion - Is the Grass Greener on the other side?



- History – The experience of Management Buy-outs/Co-operatives.
- Relationship with the Council – reputation.
- “Just another contractor” – competition.
- Access to wider markets – Little evidence.
- Ring fencing – problematic.
- Short-term vs long-term consequences.

Sometimes you get tangled up in the barbed wire.....



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