

A guide to the emergency insourcing of leisure services

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About the LGA

The LGA is the national membership body for local authorities in England and Wales. We are a politically-led, cross-party organisation

We work on behalf of our member councils to support, promote and improve local government. We do this by:

- Lobbying on behalf of councils to ensure they have a strong and credible voice with national government and the necessary resources and powers to enable councils to deliver local solutions to national problems.
- Providing a range of practical support through our improvement offer to support councils, elected members and officers on their improvement and leadership journey.

The LGA Culture, Tourism and Sport (CTS) Board is chaired by Cllr Gerald Vernon-Jackson, Leader of Portsmouth City Council. The Board provides political leadership for sport, leisure, physical activity, parks and green spaces policy.

National context

- 21st March 2020 – 25th July 2020 indoor pools, gyms and leisure centres closed to control the spread of COVID-19.
- Lack of Government funding for the sector, loss of income, social distancing measures and using their reserves is destabilising council commissioned leisure providers.
- Many councils have financially supported their leisure provider but this is unsustainable.
- The rate of recovery varies across the country. Omicron Plan B measures has seen recovery rate fall from 80 per cent to 70 per cent.
- Most providers have survived. Some have withdrawn from selected contracts and facilities to ensure their survival.
- Omicron short term restrictions without additional National Leisure Recovery Funding or other Government funding increases the risk of leisure providers collapsing.
- Many councils are reassessing their sport and leisure services and the contribution it can make to wider council objectives such as the public health agenda through direct initiatives such as exercise referral schemes, reducing health inequalities and COVID-19 recovery.
- A small number have brought leisure services back in house for a variety of reasons. A small but increasing number are considering insourcing as an option.

About the guide

- The guide is written for councils in an emergency position to support them to bring their leisure services back in-house. It follows on from the guidance note 'Options for councils in supporting leisure providers through COVID-19' (April 2020).
- The guide is not intended to instruct or encourage councils to bring leisure services back in-house. Councils are advised to take their own due diligence to evaluate their individual options
- The guide covers the following four key phases of the process:
 - 1) Decision to insource
 - 2) Transfer preparation
 - 3) Delivery
 - 4) Post-Transfer
- In addition the guide includes the following key resources:
 - FAQ
 - Transfer checklist
 - Lessons Learnt
 - Case studies

Decision to insource

Key messages:

- Exhaust all options to maintain the existing operator: explore terms that could make the existing contractual relationship more viable.
- Fully understand the implications and opportunities. What are you trying to achieve and for how long?
- Good practice and informed decision making is crucial even in an emergency situation
- Avoid unnecessary disputes - clarify the basis for the end of the existing contractual relationship and know your and the exiting provider's exit obligations.
- Good co-operation is key for a smooth transfer.
- It is sensible to enter into a Deed of Termination to record the terms of the exit and on-going liabilities post the exit date.
- Policy decisions may need to be made on a range of staffing issues

“Take careful consideration before deciding on a temporary or permanent measure: evaluate the new service objectives and strategic outcomes required before a decision is taken on whether insourcing is temporary or permanent. Aspirations for the future of the service may change in line with the industry recovery, and budgets could recover longer term with an external operator in place again”.

Key considerations

- financial impact on council budgets, and fiduciary responsibilities including Best Value
- VAT regime, and impacts of alternate models for the council
- business rate relief implications
- legal and contractual obligations (including establishing an exit route map)
- capacity to replace the operators head office functions, especially business critical functions such as payroll, finance, sales and marketing
- service continuity
- time and resource required to complete the in-sourcing
- budget for upfront costs of any new LATC set up
- governance and commissioning arrangements including client function
- staff and TUPE implications including pension liabilities
- obligations that need to be passed through to the council, such as commitments to other funders and National Governing Bodies (NGB's)
- pension bonds and guarantees required
- impact on the supply chain
- the new role of members and avoiding conflicts of interests
- the "opportunity cost" of initiatives that may be deferred due to the focus on reversions (such as capital investment plans)
- the communications plan – with messages for internal and external stakeholders
- evaluate current service performance and determine how the success of the new service will be measured in relation to the outcomes required.

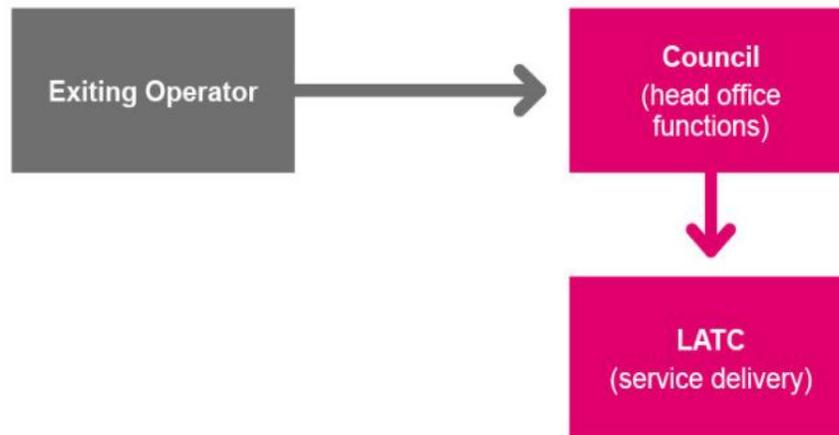
What form should the insourcing take?

Each operating model has its own advantages and disadvantages. Councils should determine the best fit for them.

Option A – Council operates leisure service in-house



Option B – Council subcontracts service to LATC



Local Authority Trading Company (LATC)

- LATC also known as a wholly owned (Teckal company).
- The LATC could be newly formed for this role or an existing wholly owned company.
- It is independent, therefore the council will need to have a service agreement in place. Lessons learnt from the arrangement with the exiting service provider should be taken into account.
- A newly created LATC will require a governance framework, including directors who will be responsible for the day-to-day operation of the company.
- The Teckal exemption contained in the Public Contract Regulations 2015 allows the council to award a contract to a separate legal entity, without a procurement process where certain conditions are met. However, recent consultation on the reform to public procurement may affect this and needs to be monitored.

In sourcing models - issues to consider

- the level and type of control the council wants to exercise over the service
- direct management preference or via a contracting arrangement
- the optimal VAT efficiency, including qualification for making exempt supplies. (VAT Notice 701/45)
- the ability to attract business rate relief (Only discretionary relief will be available, and it will be important to understand the councils existing relief policy and how the relief is funded (net benefit))
- what committee structures the new model will require, including the delegations to apply any reserved matters (in the case of the LATC)
- what balance will be struck between the liberty to innovate and perform, and the requirement for strong democratic oversight
- how to achieve the transition from traditional annual budget setting to a business planning culture
- what governance, reporting and contract monitoring systems will be put in place
- what access to operational information will be required
- if and how the model will achieve the strategic outcomes of the council
- the policy of the council on harmonising employee terms and conditions along with access to membership of the Local Government Pensions Scheme (LGPS).

Staffing

Key messages:

- TUPE, employment terms and conditions and pensions issues will need to be considered alongside the type of delivery model being implemented and will require policy decisions to be made.
- These issues are often complex and time-consuming - allow sufficient time and consult with HR early
- Councils and the exiting provider will need to work closely together on staffing issues.
- The existing employer will inform and consult staff but the council will need to inform them of the inbound transfer
- Good communication between both parties, HR and staff is important especially for staff morale – Get staff on board with the transfer, they can make the transfer smoother for colleagues and customers.
- complete a risk assessment on the status of casual workers (as defined by the exiting operator) to ascertain whether these individuals are casual or are in fact employees.

Key tasks and considerations:

- Determine if staff will remain on their current terms and conditions or move to the council's?
- Will new hires of the exiting provider be eligible for LGPS? This will be dependent on the delivery model
- The exiting operator should provide the council with a TUPE transfer list (minimum 28 days before the transfer). HR should review lines of reporting, structures, pay and benefits.
- Keep transferring staff updated on progress as much as possible. Nominate staff representatives in each centre to escalate concerns to the HR team as they arise and to feedback updates on the process.
- Identify recruitment requirements for the new structure.

Policy decisions may be required on a range of staffing matters including:

- requirement to harmonise employment terms with those of the council (required for a direct council operation, but may not be required when a LATC is deployed, the law and its interpretation changes over time and specialist HR / Legal advice may be required on this matter)
- particular consideration should be given to pension terms, the use of an admitted body scheme (ABS) or local government pension scheme (LGPS) scheme and if this is 'open' or 'closed'
- whether the use of casual workers (zero hours) will be acceptable (there may be very significant cost implications if the incumbent operator makes extensive use of casual workers / zero hours contracts)
- whether non-contractual staff policies are adopted
- whether there will be continuation of benefits not usually applicable under council control, such as bonus payments and other performance incentives.

Specialist HR advice may be required in a more complex TUPE transfer.

Pensions

On receipt of a TUPE list, an actuarial assessment will need to be commissioned with the co-operation of the exiting operator. The main requirements will include;

- determining the fund deficit / surplus attributable to the exiting operator
- identifying exit liabilities, including deficit funding and whether there is a risk-sharing mechanism in place under the contract for services
- requirements for the council to provide bonds / and or guarantees (in the case of the LATC)
- providing the employer's contribution for the admission of the TUPE cohort
- estimating the relative cost of a closed and open agreement, and risk assess the option for a closed pension agreement (in the case of the LATC).

In some cases, the fund may require the deficit to be crystallised as a result of the termination of the LGPS admissions agreement. This could be an initial expense for the council, depending upon the terms of the contract for services.

If the LGPS is open to new employees as well as transferring employees, there may be a greater cost implication compared to the exiting operator arrangements in place.

If, in respect of a LATC, participation in the LGPS is not extended to new employees, this will minimise the ongoing cost to the council. It is possible for the LATC to restrict admission to the LGPS for those new employees it designates as eligible. This will mean it will allow only a limited number of future admissions. The LATC will need to establish a qualifying automatic enrolment pension scheme for those new employees not eligible to join the closed scheme, and for it to agree the employer's contribution rate payable.

Project management is crucial!

Ensure project management processes are in place: be aware that once the decision to insource has been made the process takes on a life of its own and you cannot stop it, so ensure sufficient time is spent during the preparation stage. Do not underestimate the time and resources it will take to complete the transfer. Ensure there is a full-time project manager overseeing the process and capturing actions and updates.

Key components for successful delivery:

- Project plan – mobilisation plan
- Project initiation and governance – risk management
- Project team may include:

- external advisors (and/or PMO lead)
- head of service (relevant service head if no leisure client function exists)
- HR and payroll
- finance (credit control, membership, management accountant)
- operational representative from TUPE cohort
- procurement / suppliers manager
- sales and marketing
- ICT
- Property and asset team
- health and safety / operational lead.

Some of the key tasks:

- Undertake an options appraisal
- Determine the length of the arrangement early on. Does it fit with what you are trying to achieve?
- Review the main contract and related additional contracts e.g. leasing or financing agreements
- Develop an exit route map early - understand the existing terms and conditions, roles, responsibilities, liabilities and contractual steps that both parties need to adhere to.
- Put project management processes and team in place early
- Create an operating budget as early as possible so that decisions can be made and enacted
- For existing charitable trusts or those with social commitments, identify the community programme commitments and identify if funding for grant funded projects is transferable.

Key messages:

- Costs will vary and will be dependent on individual circumstances
- Create an operating budget as early as possible so that decisions can be made and enacted without delay
- Consider what internal resources you have that can support the process – but be aware that it is a resource intense process and other responsibilities/priorities may need to be dropped
- Carry out inspections of assets to understand the maintenance and lifecycle costs and build these into the budget.
- Think ahead - interim solutions may require another budget to be reserved for a future procurement process.

Potential budget costs:

- External advisors: HR, tax specialists, legal and/or leisure consultants, project manager
- Breakage costs from the existing contract
- Building condition surveys, and the cost of essential works identified
- HR related costs e.g. pension funds, redundancy costs, induction training costs for new staff
- Development and build time and costs for new operating systems e.g. leisure system, accounting system, CRM.
- ICT infrastructure
- Marketing and branding- website, replacement site signage, new staff uniforms, marketing,
- Stock transfer or purchase
- Intellectual Property (IP) licenses or cost for creation of new brands

Key messages:

- Transfer timescales will be dependent on individual circumstances and are difficult to determine
- Dependent on if a new operating model be required and if existing resources are available to support the transfer.
- Do not assume the transfer will complete fully or on time
- Create a risk assessment or issues log and keep it updated at all times.
- A fully completed transfer may not happen.
- Not all suppliers will be able to meet the transfer deadlines, so explore acceptable solutions.

“Understand the delegations and who makes the decisions: if you only have a small window of time with them come prepared with a list of decisions that need to be made each week, to make that time most effective. Set out a hierarchy of decision makers, so if one isn’t available the next on the list can be utilised”.

Post-Transfer

Key messages:

- Following transfer there will be a period of settling in for operational staff employed to deliver the service, and the providers of support services.
- Introduce a monitoring and reporting programme early on and set the standard for the service moving forwards
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- Carry out a formal review of the transfer process – what are the lessons learned that can aid a future transfer if the service is to be outsourced again?

Thank you!

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