Local Government and Regeneration Committee

Inquiry into arm’s length external organisations
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Local Government and Regeneration Committee

The remit of the Committee is to consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

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Introduction

1. On 3 June 2015 we agreed to undertake a short, focussed inquiry on local authority arm’s length external organisations (ALEOs).

2. During the first half of this parliamentary session the majority of our work programme was devoted to the reform of the public sector and, in particular, how this impacted on local government, either by presenting challenges to be overcome or providing opportunities to be seized. Much of the latter part of this session has focussed on community empowerment and its role in public sector reform. One of the recurring topics which arose throughout all our work was ALEOs and their role in the delivery of public services.

3. ALEOs divide opinion. They can be seen as a more efficient and cost effective way of delivering public services on one hand, or, on the other hand, a way of shifting accountability for the delivery of services.

4. This report seeks to examine the factors which give rise to this tension and highlight areas we believe are of importance if ALEOs are to be viewed as part of the solution and not the problem.

5. The key areas of interest to us were:
   - ALEOs’ role in the delivery of public services in Scotland,
   - local authority governance arrangements for ALEOs, and
   - ALEOs’ accountability to local authorities and the communities they provide services to.

Background

What is an ALEO?

6. An ALEO is a body which is formally separate from a council but is subject to its control and influence. ALEOs usually take the form of companies or trusts and can register as charities if they have charitable purposes and undertake activities in furtherance of these activities.

7. Increasingly councils are using ALEOs to deliver public services, such as leisure services, arts and cultural services, social care, economic development, property development and employment services. Figures for 2012-13 demonstrate ALEOs spend approximately £1.3 billion and employ around 25,000 people.¹
Recent reports on ALEOs

8. This Audit Scotland report, *Arms-length external organisations (ALEOs): are you getting it right?*, prepared for the Accounts Commission and published in June 2011, was aimed at councils considering setting up ALEOs to deliver services, as well as those with existing ALEOs. Its purpose was to promote and encourage good practice in the way ALEOs were set up and operated and it focused on how councils could maintain governance and accountability for both finance and performance. While acknowledging efficiencies, it identified concerns about accountability, governance and ill-defined boundaries with council functions. The report set out key action points for councillors and officers on how to strengthen their working practices and relationships with ALEOs. The report estimated there were around 130 major ALEOs at that time.  

9. In January 2015, the Office of the Scottish Charity Regulator (OSCR) published a report, *Arm’s Length External Organisations*, which reviewed ALEOs registered as charities in Scotland. According to the report almost half of the major ALEOs (64 ALEOs) were registered as charities in Scotland.

10. The report concluded that overall charitable ALEOs were operating well within their unique environment. OSCR confirmed it would continue to monitor them under its usual monitoring regime and asked ALEOs to consider some recommendations around councillor trustees and regular review of their objectives.

Accounts Commission

11. We also touched on the topic of ALEOs when we took evidence from the Accounts Commission on 24 June 2015. Douglas Sinclair, the Chair, advised a letter had been sent to council leaders, the chairs of council audit committees and council chief executives encouraging them to apply good practice more consistently across ALEOs. The letter highlighted the importance of strong governance, particularly around minimising potential conflicts of interest, ensuring regular and proportionate monitoring, and including clauses for review and termination in funding agreements. We were disappointed that the Accounts Commission following its report “Following the Public Pound”, has decided not to undertake any specific work on further definition of ALEOs but to cover the issue in guidance.

Approach to our inquiry

12. We commenced our evidence taking on 5 October in Greenock when we heard from two ALEOs, Riverside Inverclyde and Inverclyde Leisure. We also took evidence from Inverclyde Council. In addition we held a community roundtable event to provide a forum for people in the Inverclyde area to share their views about ALEOs.
13. Our second oral evidence session was held on 18 November when we heard from more ALEOs and their council liaison points: EDI Group and City of Edinburgh Council, High Life Highland and Highland Council, CultureNL and North Lanarkshire Council and Bon Accord Care.

14. Our final session on 2 December was with the Chief Executive of Aberdeen City Council, the council leader and the liaison officer for Bon Accord Care who were unable to attend the session on 18 November.

15. The minutes and the Official Reports of all the meetings can be found online.\(^8\)

16. We also conducted a targeted survey of local authorities and councillors who were board members of ALEOs. Our aim was to gather further information about the practices adopted by councils in monitoring and scrutinising ALEOs and the type of training councillors received as ALEO board members. We also invited the public to respond to some specific questions regarding ALEOs covering complaints handling and engagement. In total 16 local authorities (3 contacted us to say they had no ALEOs), 13 councillors and 8 members of the public or organisations responded.

17. Of the councils who responded, many had different approaches to governing their relationship with ALEOs and scrutiny arrangements varied. Most used a scrutiny committee of some description, but we also heard about governance hubs and partnership panels. The regularity of information and type of information collected differed amongst the local authorities. For example, the majority relied upon annual reports while one council required no regular written report. Responses suggested the type of ALEO and its purpose dictated the approach to monitoring finance and performance.

18. In terms of engagement with members of the public (service users), 6 stated they had used user surveys, although the same number did not monitor performance with reference to the public’s views.

19. The results, although not comprehensive, provide a sample view at the time of our inquiry. The full survey can be found on the committee’s webpage.\(^9\)

20. We thank all those who responded to the survey, submitted written evidence and provided oral evidence to us. This has helped clarify a number of areas of practice and informed our report.

**Delivery of public services by ALEOs**

21. The report by the Commission on the Future Delivery of Public Services (the Christie Commission)\(^10\) set out a number of challenges for the delivery of public services which remain relevant today. It also described the context for the growth in the number of local authority ALEOs over recent years—
The pressure on budgets is intense and public spending is not expected to return to 2010 levels in real terms for 16 years. In addition, new demographic and social pressures will entail a huge increase in the demand for public services. The economic downturn will also intensify and prolong demand.

Unless Scotland embraces a radical, new, collaborative culture throughout our public services, both budgets and provision will buckle under the strain.

Despite a series of Scottish Government initiatives and significant growth in public spending since devolution, on most key measures social and economic inequalities have remained unchanged or become more pronounced. The evidence submitted to us demonstrated that these inequalities account for a significant element of the increasing demands on our public services.\(^{11}\)

**Establishing an ALEO**

**Definition of an ALEO**

22. In preparing for this inquiry we found there was no definitive list of ALEOs. This is primarily because no legal definition exists for an ALEO and interpretation of what an ALEO is can differ from council to council and organisation to organisation. Disputes can arise, for example, when a council considers an organisation to be an ALEO whereas the organisation does not. This lack of clarity appears to lead to confusion as to the level of scrutiny and monitoring to be carried out by the council and the level of reporting to be undertaken by the organisation.

23. In addition, some ALEOs are also charities and have to comply with the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).\(^{12}\) This creates a further layer of complexity which can also lead to disagreement. For example, OSCR classified Inverclyde Community Development Trust as a council ALEO, this, however, was not the view of council officers or the council’s external auditors.\(^{13}\)

24. Governance and scrutiny of ALEOs would benefit from a more coherent and consistent method (or definition) of classifying ALEOs, which is explicitly linked to form and function. We recommend the Scottish Government provides a legal definition of an ALEO, or classes of ALEO, in order to provide greater certainty for local authorities, ALEOs, the public, auditors, OSCR and the Scottish Parliament. It would certainly also aid scrutiny.

**Reasons why councils opt to create ALEOs**

25. ALEOs were almost non-existent until the 1980s. Since then there has been a steady increase year on year in leisure trusts and community-led businesses.\(^{14}\)
According to the Audit Scotland report “councils typically operate between none and four ALEOs, although three councils operate 14 or more”.15

26. There are a number of reasons why a local authority might wish to establish an ALEO. It might want to sell services to other organisations or individuals to generate income or the council might want to reorganise a package of services on a more commercial footing while reducing costs.

27. Increasing budgetary constraints coupled with rising demand for services could mean some local authorities approach the decision to deliver services via ALEOs as a fait accompli (because services can no longer be delivered by the local authority without altering the level of service provided). Other local authorities may view ALEOs as an opportunity to develop new income streams and fulfil a role the authority was not equipped to directly deliver.

28. We were keen to understand the motivation for local authorities to deliver public services externally rather than improving effectiveness and efficiencies ‘in house’.

29. Jillian Ferrie of CultureNL explained North Lanarkshire’s incentive for the transfer of services to an ALEO was to provide—

”a sustainable future for cultural services to allow continuous service improvement in the years ahead; to reach new audiences and develop strong partnerships; to enable services to operate in a more responsive way; and to undertake new developments, besides making a financial saving on non-domestic rates.”16

30. She further explained CultureNL took over cultural and associated services following “a full and transparent options appraisal, led by KPMG and utilising a toolkit devised by Museums Galleries Scotland”.17

31. Moving service delivery to charitable ALEOs can result in immediate savings through favourable treatment of VAT and non-domestic rates relief. Bill Alexander, Highland Council, explained finance was a key factor in its decision to create an ALEO—

”The initial motivation was undoubtedly that the cost base of the arm’s length external organisation would allow savings to be made with regard to non-domestic rates.”18

32. However, he said savings had been achieved by High Life Highland largely through “increased income and efficiencies”19 and not at the expense of staff terms and conditions.20 He estimated the council was making “savings of approximately £1.1 million” per annum.21

33. The ALEO landscape is growing and becoming increasingly diverse and complex as more local authorities establish ALEOs to take on service delivery roles traditionally carried out by councils ‘in house’.
34. Public sector reforms have rationalised the number of central government arm’s length bodies to make them more flexible, responsive and effective by removing unnecessary bureaucracy and duplication in service planning and delivery. In 2007, the Scottish Government undertook to simplify the public sector landscape by reducing the number of Scottish public bodies under its control by 25% by April 2011 from a baseline figure of 199.

35. We have concerns one cluttered landscape is being replaced with another, which ultimately might lead to a similar lack of flexibility, increased bureaucracy and lack of public accountability as pertained in central government. We would welcome the Scottish Government’s view on how the developing ALEO landscape fits within its public service reform agenda and how it is monitoring this trend on a national scale.

Added value provided by ALEOs

36. We wanted to learn more about the added value we were told ALEOs bring, which could not be achieved from keeping a service in-house.

37. Ian Murray, High Life Highland, said there was “flexibility in being an ALEO”. He explained it was beginning to develop partnerships with the private sector, adding “the ability to get grants that are not available to councils is overstated in many people’s minds, but it exists”. An example of this flexibility he advised was the three-way capital funding partnership between a private catering organisation, the Inverness common good fund and the council’s own capital funds to upgrade visitor services and the café at Inverness botanic gardens.22

38. EDI Group’s fundamental purpose was to create income for the local authority by operating at arm’s length from the council, with a specific focus on property development. The rationale being it should be able to realise greater property values than would be realised if the same activity was undertaken within the council.23 Eric Adair, EDI Group, explained that over a 20 year period EDI had paid £60 million in dividends to the council.24

39. CultureNL said its charitable status allowed it to apply for trust funding, although this was usually for small amounts, and it managed to secure around £500,000 in external funding, although little of this was derived from new funding sources.25

40. As well as the immediate savings an ALEO can deliver through beneficial rate reductions and tax relief, we heard there were other benefits to operating independently of the council. ALEOs can innovate in service delivery largely because they can be more flexible in their structures and organisation and operate across different sectors to generate efficiencies.

41. Highland Council told us High Life Highland had “also began to develop partnerships with the private sector” and this had worked “because of attitudes and relationships”. Bill Alexander said—
it has not been about … simply managing budget reductions; rather it has been about achieving creativity with a particular focus on the services it provides.\textsuperscript{26}

42. When asked to expand on this, he advised—

\begin{quote}
We set a policy framework around the ALEO and some parameters within which it should operate. We then encourage it to fly, and it has flown. Some magic dust is created, perhaps partly because the ALEO is not the council. It has a sense of identity and a focus on its business, and it fosters loyalty. It has a degree of creativity and there is passion from its independent directors, who bring a range of skills to the board. It also has passion from its staff, who enjoy its identity and would not want to come back to the council.\textsuperscript{27}
\end{quote}

Staff culture benefits

43. We were keen to understand why, if ALEOs are wholly owned and directed by councils, staff felt more empowered when working for an ALEO rather than the council. Bill Alexander, Highland Council, explained in relation to High Life Highland that back office staff were not necessarily aware the organisation was council owned, he further clarified—

\begin{quote}
What they see is a standalone independent company of 600 to 700 people, many of whom they know personally, a chief executive whom they know personally and a company with its own branding and a high profile. High Life has ties and badges and you can get a jacket with the label on it. High Life has an identity and people talk about it.\textsuperscript{28}
\end{quote}

44. We note the many reasons why local authorities establish ALEOs. Common benefits presented to us are the potential for savings, efficiencies and income generation along with a staff culture which can approach provision of services in a more dynamic and innovative manner.

45. Budget pressures and increasing demands for services call for progressively innovative approaches to service delivery. We believe this could be achieved within local authorities, but we also recognise this is a decision for local authorities to take based on a robust assessment of all the options. Local authorities should be able to take advantage of all the delivery models available to them. Whichever route is taken must be accompanied by proper and appropriate controls relevant to the ALEO model, the nature of its role and the level of risk in place.

46. Public service delivery is now a significant role undertaken by ALEOs, who are responsible for substantial budgets and many staff. We recommend in addition to financial scrutiny, including savings and efficiencies, there should be greater emphasis by local authorities on monitoring service performance delivery as well as ALEOs’ effectiveness in meeting the local authority’s
outcomes. We remind local authorities that, in most instances, they remain accountable for the delivery of services provided by ALEOs.

Staff pay, terms and conditions

47. We sought further clarification as to the terms and conditions staff of the transferred from the council to the ALEO. CultureNL, High Life Highland and Bon Accord Care confirmed staff had transferred on the same terms and conditions and rates of pay as they had with the relevant council.

48. We also investigated whether new staff had been employed on zero-hours contracts.

49. Jillian Ferrie, CultureNL, said “we do not issue anyone with a zero-hours contract and that casual staff apply as casual staff” giving an example of needing additional front-of-house-staff for a pantomime. High Life Highland employed sports coaches on zero-hours contracts because it “ensures that there is mutuality.” Ian Murray further clarified this by indicating it ensured staff turned up but doesn’t mean “they cannot work for anyone else”.

50. The Equality and Human Rights Commission Scotland’s written submission discussed the concerns expressed around pay and conditions when ALEOs were first created. It concluded “recent employment tribunal decisions appear to have mitigated this concern, but it remains important that the creation and management of ALEOs does not lead to any diminution of employees’ rights”.

51. City of Edinburgh Council and the EDI Group had a different approach to staff recruitment which reinforced the ALEOs specialist nature. Eric Adair from the group advised there were no council staff now working for the organisation and employees were recruited privately with separate terms and conditions from the council. Peter Watton added “that was one reason why it was set up—the ability to attract better commercial talent”.

52. We welcome the assurance from those local authorities we took evidence from that all staff had transferred on the same terms and conditions as provided by the council. Although we note the use of ‘casual’ contracts and ‘zero hours’ contracts in particular circumstances. We suggest local authorities pay close attention to this to ensure this practice does not become a widespread means of providing continued savings and efficiencies not otherwise achievable.

53. We consider it would be a derogation of responsibility by a council if staff who work for wholly owned local authority ALEOs, or ALEOs which receive funding from local authorities to deliver services, were employed on pay and conditions inferior to the council’s. This is because, ultimately local authorities are publicly accountable for services delivered at arm’s length, in the same way as if they had been delivered ‘in-house’.
54. This responsibility is of particular importance given the advent of ALEOs established specifically to provide social care, which historically has had significant equal pay liabilities.

Democratic accountability of ALEOs

Governance of ALEOs


56. We were keen to understand whether in that context certain structures posed different challenges in terms of governance, whether for an ALEO or for the parent local authority.

Appointment of boards

57. Boards of ALEOs can be composed to satisfy particular needs or to provide particular expertise. This is achieved through the selection and appointment of individuals on the basis of them having specific expertise, experience, objectivity and professionalism. Appointments can also provide continuity as local government elections have the potential to impact on councillor board members.

58. From the small selection of ALEOs we took evidence from it was clear ALEO boards were set up with a variety of arrangements—

- Inverclyde Leisure consisted of five elected members from Inverclyde Council, two employees of Inverclyde Leisure, one from trade unions, one from the local sports council and two from the community.

- Riverside Inverclyde had nine members, three of whom were councillors, three from the private sector, one from Scottish Enterprise, one from the local chamber of commerce and one from the community.

- CultureNL had 13 directors, comprising of seven independent and six (councillor) partner directors

- Bon Accord Care’s board included a chairman, managing director, finance director, and four non-executive members on the board with no councillor members.

- High Life Highland had 12 board members, eight were independent non-executive directors and four were councillors
• EDI Group comprised of three non-executive members, one executive member and three councillors.

59. In all the cases above we found the council had the authority to ratify and, if necessary, veto the appointment of independent non-executive members.

60. Bill Alexander, Highland Council, said—

"In governance terms, we do not rigidly pull every single string that makes High Life work. It has a degree of freedom and autonomy within the overall priorities, parameters and policies of the council. We have not yet come to an issue that would break that trusting relationship. With the budget challenge that is coming down the road, that might get more difficult, but to date it has worked."

The role of councillors

61. Councils are responsible for ensuring the public money they provide to ALEOs is properly used. This requires robust governance arrangements with clear roles and responsibilities. Councillors who are involved with ALEOs in any capacity need to be aware of the potential for conflicts of interest and the risk this poses to governance and accountability. If there is in any doubt as to what action to take in any particular situation advice should be sought from the council's monitoring officer.

62. We have previously raised some issues in relation to code of conduct considerations applying to councillors sitting on ALEOs. While undertaking other scrutiny work during 2015 we had written exchanges correspondence with Commissioner for Ethical Standards in Public Life in Scotland (“CESPLS”) and OSCR.

63. CESPLS advised that the Councillors’ Code is expressly applied to the actions of councillors when carrying out duties on bodies to which they have been appointed or nominated by the council (section 3.17)—

"You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body."

64. In its written submission, OSCR advised that during its review—

"We found that councillor trustees [on ALEOs] did not generally withdraw from discussions where the general relationship or business with the local authority was discussed. We noted that the relationship is unavoidably close and it would not be practical for councillors to remove themselves from all discussions pertaining to business with the local authority."
65. Councillor Clocherty, as a member of Inverclyde Leisure, explained how he would deal with declaration of interests and conflict of interests in practice—

> Every time that Inverclyde Leisure is discussed I will intimate that I am a member of Inverclyde Leisure’s board. Unless the council is considering a contract situation or a proposal to spend money, I will stay in the chamber.\(^{38}\)

66. We explored this further with Councillor Wilson, who at one point was simultaneously chair of the planning board and a director of Riverside Inverclyde a regeneration trust which develops land and property—

> I inevitably declare an interest and leave the chamber when such a planning application is to be discussed, having taken advice—usually the day before—from the solicitor who sits on my right at the planning board.\(^{39}\)

67. He further explained “we are a relatively small council, which means that involvement in outside bodies and different functions is spread across a limited number of councillors”.\(^{40}\)

68. Bill Alexander, Highland Council, explained “the council does not operate governance through the councillor being on the board; that happens in council committees”. He considered the councillor’s role was about “partnership and communications”.\(^{41}\)

69. To follow up this issue we wrote to CESPLS. The Commissioner advised most ALEOs would be covered by the specific exclusion from the general rule to declare interests – set out in paragraph 5.18 of the Councillors’ Code of Conduct. He went on to state—

> “the special exclusion is a pragmatic departure from the general rules set out in the Code. The exclusion is designed to make it easier for the ALEO and the Council to continue to operate without being inhibited by some of the potential difficulties which you and other members of the committee were exploring with the witnesses. However, it cannot remove the risk of conflicts of interest, as was also evident, and I think that it could lead to some confusion about the effect and application of the general rules about declaration of interest and participation in meetings where an interest has been declared.”\(^{42}\)

70. The Commissioner concluded that, as he has not received any ALEO related complaints recently, “I have no cause for concern”.\(^{43}\)
Training of councillor ALEO board members

71. The Accounts Commission expects basic training to be compulsory for any councillor or officer who is taking up a role in an ALEO with an annual review or update to ensure that key matters remain at the forefront of those involved in ALEOs.

72. According to our survey all councils who responded offered either mandatory or discretionary training on declaration of interests, conflict of interests, and risk awareness. Councillors were also asked about training and the vast majority noted training on all three issues should be mandatory. It was also noted some ALEOs provided training for board members. Aberdeenshire Council categorised training for councillors depending on whether the ALEO is an advisory or a decision making organisation.

73. We recommend local authorities provide mandatory training on declaration of interests, conflict of interests, and risk awareness for all councillors nominated or appointed as board members to ALEOs delivering public services.

Council scrutiny arrangements

74. The Accounts Commission stated in its report on ALEOs—

Councils should set clear objectives for ALEOs and put monitoring systems in place, including tailored performance indicators. Mechanisms should be put in place to identify and act upon under-performance, including trigger points to review the delivery agreement. Monitoring should be proportionate to the scale of the activity and the risks involved and should involve regular financial reporting and service outcomes.44

75. Witnesses explained how the ALEOs they are responsible for were monitored and scrutinised, for example, Bon Accord Care had an ALEO governance hub which provided information to the audit, risk and scrutiny committee and the education and children's services committee on a bi-annual basis.

76. Information gathered from the survey showed a broad range of approaches. For example, Stirling Council advised the exact requirements for scrutiny were dependent upon the ALEO and the level to which it was funded by the council.

77. We considered the differences between some of the approaches and whether this had any impact on the effectiveness of monitoring and whether certain approaches increased risk.

78. In the course of finalising our report the City of Edinburgh Council announced the creation of an ALEO to deliver social care.45 This is relevant as there is now a trend for delivery of social care through an ALEO with three major cities, Glasgow,
Aberdeen and Edinburgh having opted to do so. In addition Scottish Borders delivers social care through an ALEO. Our researchers could not, however, identify other examples as a consequence of a code of clear identification by local authorities about their use of ALEOs.

79. Councillor Laing, Leader of Aberdeen City Council, explained the rationale for having no councillor members on the Bon Accord Care board—

   “It was felt that it would be best if we had people with the correct skill set. Councillors from the administration were involved in the selection process; opposition councillors chose not to take part.”

80. Angela Scott, Chief Executive of Aberdeen City Council explained in more detail the governance arrangements—

   “The ALEO hub gives a view to the audit committee about the system of risk management that Bon Accord Care has in place. The ALEO hub, supported by the commissioning team, also scrutinises the performance of Bon Accord Care, and reports are submitted to the audit and service committees of the council.”

81. She clarified the hub is staffed by officers “we have a finance lead, a human resources lead, a risk lead, a legal lead” and advised “all the information is triangulated; it is all joined together and tells a cohesive story about the performance of that organisation. That information is presented to the relevant committees, on which the elected members sit.”

82. When challenged about the sifted information elected members receive, Angela Scott responded—

   “ALEOs provide the management assurance, the council commissions its own internal audit to provide internal assurance, and there is the external Care Inspectorate assurance. That is wholly consistent with the assurance that we provide on all other service activity across the council.”

83. She also confirmed there was no additional cost to the council associated with having an ALEO hub.

84. Bill Alexander of Highland Council advised how it was addressing cross service council priorities—

   “There has also been an on-going commitment to council priorities, such as the integration of adult health and social care and corporate parenting for children. In the past year, High Life Highland has joined the community planning partnership as a full member, and we are beginning to engage in partnership issues.”
85. There is some confusion about the role of councillors on ALEOs. Representation on ALEO boards by councillors can help to ensure the ALEO is being properly run and local authority funds are used effectively. Such representation can also provide a useful window on local authorities’ policies and priorities.

86. As a matter of best practice we consider local authorities should ensure major ALEOs, those which deliver public services, should be included within and represented on community planning partnerships.

87. We also recommend all local authorities clearly state which ALEOs are responsible for the delivery of services on their behalf. This information must be clearly accessible to all.

88. A recent area of public sector reform is the integration of health and social care. Delivery of social care by ALEOs adds an additional tier in the system. The transition in relation to social care ALEOs requires to be seamless.

89. We have some misgivings around ALEOs delivering services to vulnerable people, such as social care services. We believe ALEO boards should have at least one councillor board member given the potential severity of impacts on those receiving social care services should something go wrong. We recognise that councillors sitting on ALEOs have legal obligations to the ALEO. This adds to the confusion of the ALEO landscape.

90. While we recognise there is a balance between independence and accountability, it is the council which retains ultimate responsibility for the provision of the service.

91. We also seek the Scottish Government’s observations on the implementation of its integrated health and social care policy through ALEOs. In particular, whether this poses difficulties for local authorities measuring and reporting on their direct input to the national health and wellbeing outcomes which apply to integrated health and social care, for example, reducing health inequalities.

92. In addition, with the steady increase in the number of ALEOs delivering public services, we seek the Scottish Government’s views on how this trend impacts on its cross-cutting initiatives, such as preventative spend and in particular how such spend is being monitored, recorded and published particularly in relation to Scotland’s National Performance Framework.
Achieving Best Value in public service delivery

93. A statutory duty of Best Value was placed upon local authorities in the discharge of their functions by the Local Government in Scotland Act 2003.

94. The Accounts Commission has responsibility to define statutory performance information (SPI) which councils must collect and report on. Its 2015 Direction is set out below—

**SPI 1:** Each council will report a range of information setting out:

- Its performance in improving local public services (including with partners).
- Its performance in improving local outcomes (including with partners).
- Its performance in engaging with communities and service users, and responding to their views and concerns.
- Its performance in achieving Best Value, including its use of performance benchmarking; options appraisal; and use of resources.\(^\text{52}\)

95. The most recent National Benchmarking Overview Report states—

There is evidence that the ongoing budget constraints are beginning to impact upon some service areas. Given further projected major reductions to public budgets across the coming period, it will be important to closely monitor the impact on local service levels, service quality and public confidence in local services.\(^\text{53}\)

96. One of the key challenges in holding an ALEO to account is the need to monitor objectives met and outcomes delivered. As ALEOs become recognised service deliverers we consider local authorities must focus their monitoring on whether the organisation continues to meet its objectives and to keep asking whether the ALEO continues to be the most effective model for service delivery.

97. The Accounts Commission’s direction has clarified that the information to be collected should extend to public service delivery and outcomes including with partners. We welcome this additional focus given the trend of public service delivery by ALEOs.

98. We consider the Local Authority Benchmarking Framework should be developed by the Improvement Service to capture information which
enables local authorities to learn from other councils which provide similar public services through ALEOs.

Review of ALEOs

99. Many ALEOs change or expand services over time and so it is important for local authorities to keep under review ALEOs objectives and outcomes.

100. Some local authorities undertake continuous review, while others review the ALEOs business plan at the same time as the annual report. Some local authorities adopt a cyclical approach to review, for example, every three years. Levels of funding are a significant factor in the incidence of review.

101. In its recent letter to local authorities the Accounts Commission recommended councils include clauses for review and termination in funding agreements.

102. Fife Council advised, in response to our survey, it had amalgamated two of its ALEOs, namely Libraries and Museums with Theatres. Available information suggests, however, not many ALEOs are wound-up or merged.

103. When a council review identifies non-performance there are a number of actions which could be taken by local authorities to address failure, for example, the withholding funds or winding up an ALEO.

104. During the course of our inquiry, an issue arose with a Glasgow City Council ALEO, Jobs and Business Glasgow. The organisation was formerly known as Glasgow Regeneration Agency and was created after the merging of five regeneration trusts. An investigation is now ongoing in connection with £4 million in EU funding it had received. According to the article—

It now faces the prospect of paying all or some of that sum back after a routine audit by the Scottish Government in late 2015 found discrepancies in how the monies were accounted for. However, the city council said there was “no evidence of personal gain”.

105. Councillor Laing advised that Aberdeen City Council had on one occasion delayed funding because an ALEO (not Bon Accord Care) had failed to produce its business plan on time.

106. North Ayrshire Council in response to our survey stated—

Withholding of funding tends to suggest a breakdown of relationships where the council and the ALEO have different and competing priorities. In our case, the Leisure Trust and Regeneration Company are members of the Community Planning Partnership. This ensures consensus as to broader policy objectives and that all partners are able to work together to the same objectives.
107. We note from the information available to us that not many local authorities withhold funds or have wound-up ALEOs due to non-performance. Withholding funding could have a negative impact on the ALEO and the services it delivers, and so, we believe local authorities should have a range of sanctions available to them to deal with the variety of situations which could arise.

108. ALEOs tend to be wound-up only when they become dormant or are merged. Those local authorities that currently undertake ‘as required’ reviews should consider formalising reviews of ALEOs to ascertain whether the organisation is still meeting the purpose identified by the local authority, whether they are delivering the outcomes specified by the authority and whether an alternative delivery method is appropriate.

Public involvement in agenda setting of ALEOs

109. The rise of ALEOs has seen the role of local authorities change. There has been a shift from local government seeing their role as service providers to one of a manager. This has impacted on the workings of democratic accountability.

110. Previously communities had an opportunity to exert some influence over decision-making through their vote at local government elections, thus ensuring a degree of public accountability. The arm’s length nature of these organisations means this link is now distanced and in some cases potentially broken. Some of the respondents to our survey were concerned about public involvement in decision making. One response stated the public was not asked to agree an arrangement whereby their services or assets were given to a trust.57

111. We enquired how ALEOs engaged with the public and measured support for their services. High Life Highland explained as part of the integrated health and social care arrangements it was increasingly developing local community planning forums and saw those in the future as “a hub for community and public engagement” although it would not refer to this as public scrutiny more discussion about local delivery.58 Bill Alexander, Highland Council, said High Life Highland has a very high public profile and is very active in community debate and discussions about the delivery of services.59 Bon Accord Care carried out service user surveys and attended local meetings, while CultureNL used resident surveys and reported the nature and number of comments and complaints on a quarterly basis to the council committee.60

112. One of the criticisms levelled at ALEOs is that the transfer of services provide an excuse to increase the cost of services. Witnesses rejected this assertion. High Life Highland had adopted a “stack ‘em high—sell ‘em cheap” approach which had increased the number of people using the leisure facilities and was aimed at families and those with lower incomes.61 Jillian Ferrie, CultureNL, advised it had a pricing strategy—
As part of the council, we increase prices by 3 per cent every year. It is quite a small amount of money to add on. It could mean, for example, 10p on a community let—it is not a massive amount.  

113. We also heard there is still some public confusion about who delivers services.

114. North Lanarkshire Council has established two ALEOs, CultureNL and NL Leisure. A particular example of public confusion was the letting of community facilities by both organisations. Lisanne McMurrich, North Lanarkshire Council accepted that a decision relating to a particular school and letting of its community facilities “perhaps muddied the waters” and said “we are still evolving our approach”. She did not rule out merging the two ALEOs saying “at a point in time, that might be a consideration for the council”.

115. Bill Alexander, Highland Council, considered some members of the public are not clear which body provides services in its area—

Sometimes I think that the public do not really know who provides things; they just want the service. I still get letters of complaint about services that the council does not provide.

116. Our survey also highlighted an issue concerning ALEOs’ access to funding streams which were meant for voluntary or community organisations (VCOs). The respondent said—

Many local VCOs have been denied funding because when these so called ALEOs apply for money they don’t just look for a few thousand pounds but they target hundreds of thousands or more.

Complaints handling for ALEOs

117. The Scottish Public Services Ombudsman in his written submission indicated, “SPSO is able to accept complaints about not only organisations listed directly in our legislation but organisations acting on their behalf. This means we can normally take complaints about ALEOs”.

118. The Ombudsman provided us with an extract from the guidance letter he issued to local authorities—

Some local authorities use arm’s-length external organisations (ALEOs) or Trusts to deliver council services. While these organisations are separate from the local authority they are subject to local authority control and local authorities are still responsible for ensuring the services provided meet the required standard. It is for each local authority to ensure that ALEOs and Trusts are meeting the requirements of the model CHP [complaints handling procedure].
119. He also clarified he expects there to be a single route of complaint where it relates to non-frontline staff because multiple routes lead to confusion and put people off complaining.\textsuperscript{68}

**Community empowerment**

120. Current Scottish Government policy direction is to strengthen communities’ involvement in the design and delivery of services. For example the recent Community Empowerment (Scotland) Act 2015 makes provision for participation requests; a mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. This could include community bodies taking on delivery of services.

121. In our scrutiny of the Bill we found local authorities are defined as a public service authority but no ALEOs were similarly defined.

122. We were told by Scottish Government officials during our deliberations it would be “possible to designate an ALEO as a public service authority if it was a body corporate and wholly owned by one or more public service authorities”.\textsuperscript{69}

123. Given the number of major ALEOs delivering services previously delivered by the local authority, we seek the Scottish Government’s views on whether there is a legislative barrier preventing communities’ involvement in the design and delivery of such public services. If so, whether the Scottish Government has any plans to use the Community Empowerment Act to widen the definition of a public service authority both generally and specifically to include ALEOs which are a body corporate and wholly owned by one or more public service authorities.

124. The use of arm’s length organisations to deliver services has raised concerns these organisations are less accountable to local communities. We see user-driven governance as vital in the operation of ALEOs and consider local authorities must ensure their monitoring of ALEOs’ prioritises the involvement of communities and ensures services are accountable to communities.

125. We are keen to ensure that delivery of services by ALEOs does not affect the work being undertaken by local authorities to engage meaningfully with local communities about services.

126. It is important community voices are heard in public sector processes, and also that communities lead change for themselves. We expect local authorities to ensure ALEOs involve communities in design of the services they receive to better ensure they meet their needs. We would not want to see an increase in services being im posed upon communities, as was prevalent prior to community empowerment.
Overall conclusion

127. The Christie Commission emphasised the need for a step change in how services are delivered and developed and who was to deliver them. The need for involvement of users and the wider community was crucial.

128. The Commission’s principles and objectives were underpinned by the Community Empowerment (Scotland) Act 2015. Budgetary pressures and a desire to take advantage of potential savings and efficiencies have resulted in the increased growth of ALEOs and an increasingly cluttered ALEOs landscape.

129. There is an inherent tension between the involvement of citizens under the public reform agenda and the use of ALEOs which can lead to an increasingly fragmented service delivery environment. It is therefore important we continue to scrutinise this balance to ensure public services are delivered not only in the most efficient and effective manner with performance monitored in relation to outcomes but that they are also designed in conjunction with the public to meet the Christie Commission aspirations.

130. We highlight three emerging areas in relation to ALEOs which we believe should be subject to specific focus. These developing themes should be revisited within the next session of the Parliament to review whether potential challenges have materialised into substantive issues for local authorities, ALEOs, and the public:

- multiple ALEOs functioning in the same area delivering similar services
  - duplication of services
  - potential to cause confusion to the public
- merging of ALEOs to create greater efficiencies and savings resulting in the creation of a ‘super’ ALEO
  - less flexibility for local authorities
  - greater risk to local authorities if non-performance identified
- provision of services to vulnerable people by ALEOs, for example, delivery of social care
  - whether outcomes are being achieved
  - level of public involvement in service delivery
  - potential risks if non-performance identified


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65 Public survey, question 4, response 3.
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