



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 4 September 2012

Session 4

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EDUCATION AND CULTURE COMMITTEE

21st Meeting 2012, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Marco Biagi (Edinburgh Central) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*Jean Urquhart (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Douglas Black (Unison)

Mark Bramah (Association for Public Service Excellence)

Gerry Campbell (South Lanarkshire Leisure and Culture)

Heather Stuart (VOCAL)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 4

Scottish Parliament

Education and Culture Committee

Tuesday 4 September 2012

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning. I welcome members to the 21st meeting of the Education and Culture Committee in 2012. I remind members and those in the public gallery to ensure that all mobile phones and other electronic devices are switched off—not just switched to silent—at all times. No apologies have been received for this morning's meeting.

Agenda item 1 is to consider whether to take items 4 and 5 in private. Are members content to do that?

Members *indicated agreement.*

Local Authority Cultural Trusts

10:00

The Convener: Item 2 is an evidence session on cultural issues that the committee has decided to look at after the summer recess. We start with how the establishment of cultural trusts has impacted on cultural services and delivery. This is the first of a series of one-off evidence sessions on culture issues. At the end of those sessions, we will take evidence from the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop.

I welcome to the committee Douglas Black, a regional organiser with Unison; Mark Bramah, the assistant chief executive of the Association for Public Service Excellence; Gerry Campbell, the general manager of South Lanarkshire Leisure and Culture; and Heather Stuart, chair of VOCAL, the association for cultural and leisure managers in Scotland. Good morning to you all.

Before I start the questions, I remind the panel that we will be delighted to hear your views on all the questions, but it is not necessary for all four of you to answer each of the questions, particularly if an answer that has already been given is at least roughly in line with your view. It would therefore be helpful if not everyone answers every question unnecessarily.

I begin with a general question. What was the reason for establishing cultural trusts in the first place? No such thing existed a few years ago, but they seem to be fairly widespread now. Why have councils established cultural trusts during the past few years?

Douglas Black (Unison): Our evidence clearly shows that councils have decided to set up cultural trusts as an efficiency saving; they are tax avoidance schemes to avoid paying VAT and to get relief on non-domestic rates. It is quite clear to us that tax avoidance, rather than the delivery of services to the local community, has been the primary reason for setting up trusts.

Mark Bramah (Association for Public Service Excellence): The development of leisure and cultural trusts started in the mid-1990s. It came about because of budget pressure on sport, leisure and cultural services. Local authorities have taken advantage of them through the reliefs on business rates. Although there are other objectives in setting up leisure and cultural trusts, I agree with Douglas Black that one of the main advantages has been the ability of local authorities to use them to reduce the pressure on their budgets. That has been the primary driver behind the formation of leisure and cultural trusts. However, that is quite a general point. Councils have had other reasons for setting them up, but

reducing budget pressure is the main reason why they have gone down that route.

The Convener: If there are reasons other than monetary efficiency and financial savings, what are they?

Mark Bramah: I am sure that my colleagues from South Lanarkshire Leisure and Culture and VOCAL will make the same point. Most leisure and cultural trusts are set up with community objectives such as increasing participation and other, wider social objectives. There is an argument that one of the reasons is to engage communities more effectively and to broaden the base for sport and recreation. It is an argument that is often made by sport and leisure trusts. However, in reality, we have to ask whether local authorities would have sought to set up leisure trusts on the scale that they have had the pressures on local authority revenue and capital budgets, which have been increasing, been the same. In APSE's view, that is doubtful.

Heather Stuart (VOCAL): To pick up on previous points, we have to be realistic. We would probably agree that it is legitimate for local authorities, given the pressures that they are facing across services, to look for ways of delivering those services more efficiently and effectively. There is evidence that that is what they are doing.

There are particular challenges for culture and leisure within the local government budget process. They compete against more obvious priorities that do not have the same level of discretionary spend attached to them, such as child protection and schools. It is hard to make a case for culture and leisure, even though there is a lot of evidence of wider impacts, such as health improvement. That was Mark Bramah's point.

Alternative delivery models—not just trusts—offer a genuine opportunity to look at how we can protect services in the longer term for the benefit of communities. Such models can be set up so that they are still strongly linked to the democratic accountability of councils. Essentially, they are a way of delivering on the strategic priorities that they would have had, but with the financial savings and the opportunity to protect jobs and services.

For example, a study down south, carried out by Wigan Leisure and Culture Trust, found that the

“other key advantage of Trust status ... has been the ability to generate investment for the library service. Money attracts money, and the ability to invest makes the service a serious partner and able to attract other resources.”

Other national bodies, such as Museums Galleries Scotland, which were perhaps late in seeing the potential of alternative models, now have a toolkit to help local authorities to assess which is the right model for their services. They

now recognise the increasing attractiveness of alternative delivery models within the sector. The benefits are protection of services and jobs, longer-term investment in services, flexibility of operation—the alternative delivery models are often on a smaller scale than complex local authority organisations—and often a single focus on one set of services, where specialisms can be built up. There is also the championing, advocacy and additional skill set that comes with the strategic guidance of a board of directors.

The Convener: There was an awful lot in there.

Heather Stuart: I know.

The Convener: I will not jump in. I am sure that everyone around the table will be desperate to cover a number of those areas as we go forward.

Gerry Campbell (South Lanarkshire Leisure and Culture): Leisure trusts have been around for about 10 to 15 years; cultural trusts are perhaps a bit more recent. In addition to the financial advantages of the trusts, my experience, from across Scotland, is that when people are slightly removed from the local authority context, in an arm's-length organisation, they appear to take a more entrepreneurial approach to how services can be delivered in the best way to meet the needs of the community.

That is one of the obvious advantages. If you engage with and talk to people who are running the services, they will say that there is perhaps slightly less bureaucracy than there might have been had they been part of the formal local authority set-up. They are a bit closer to what is going on, and decision making can be faster. At the same time, they recognise that they are there to serve needs. There is quite a lot of evidence of that. In South Lanarkshire we have been doing a lot of work to quantify staff engagement.

The Convener: Thank you. You have given us some good opening remarks. There were a lot of subjects in there that I am sure members would like to cover.

Marco Biagi (Edinburgh Central) (SNP): In the discussion about financial efficiency, there was a focus on the tax side. I hear concerns from union representatives in my constituency about potential gaps in the remuneration of workers and working standards opening up and acting as a financial incentive. Is that a legitimate concern? Is that reflected in arm's-length organisations throughout Scotland and elsewhere?

Gerry Campbell: In South Lanarkshire, the council made a commitment at the start, when it was extending the model of the stand-alone sports trust into cultural activities, that the terms and conditions of staff would mirror those of council staff. There are some minor differences, but any

significant changes in the living wage, and in other things that have been rolled out across Scotland, continued to be offered—the terms and conditions have been protected. That has been a big issue for the staff, many of whom are at the front line in the delivery of services.

Douglas Black: I agree with Gerry Campbell that that is certainly the case in South Lanarkshire, and it is also the case in Falkirk, where the council has a similar arrangement for its community trust. However, it is not the general pattern across trusts that have previously been set up. As Gerry said, trusts have been on the go for around 10 to 15 years, and those protections are certainly not in place in the majority of them. What we have seen in a lot of trusts is the diminution of our members' terms and conditions and in many cases their wages too, plus a huge casualisation of the workforce. That is of real concern to us.

Mark Bramah: I, too, concur with some of those comments. We cannot generalise about every trust—although the point about South Lanarkshire is important—but there are trusts that have had freedom and flexibility to set terms and conditions for staff, and I concur that there has been some casualisation. Some trusts have set their own terms and conditions, which has not necessarily been to the advantage of staff in those organisations, but it is a mixed picture. We cannot say that staff terms and conditions have universally been cut as a result of the formation of the leisure trusts, but it depends. I could give examples of trusts in which that has taken place.

Marco Biagi: Please do.

Mark Bramah: It has taken place primarily in England. For instance, some of the earlier trusts that were formed—such as Greenwich Leisure Ltd, which is an industrial and provident society—have been competing for contracts. They have picked up contracts with other authorities and managed those as contracts, and there has been an impact on staff terms and conditions under the nature of the arrangement that they have delivered. There are examples of leisure trusts that have sought to do that but, equally, there are examples of authorities that have insisted that those terms and conditions are maintained.

Heather Stuart: All those points are legitimate. However, some thought must be given to whether some of the things that are developing post-transfer of services to trusts would have taken place if those services had been retained within councils. Local government faces the same challenges as trusts with regard to efficiencies, service reductions, discontinuation of services and potential changes in terms and conditions in relation to overtime, redundancy policies or whatever.

Marco Biagi: I will focus on one particular aspect of employment policy that has been quite salient in political discussion. What is the general status of the living wage in arm's-length cultural trusts throughout Scotland? Is it the case that—with the exception of exemplars of good standards—councils that have signed up to the living wage have seen that commitment stop before it reaches the arm's-length trusts, which are outwith such commitments?

Douglas Black: I think that that would be the case unless there was an agreement in place—as there is in South Lanarkshire and Falkirk—that the trust would mirror the conditions of the local council, which is not the norm in trusts up and down the country. I suspect that the evidence would show that trusts are not picking up the living wage even though the councils have done so.

Heather Stuart: To be fair, it might be worth doing some further analysis of that. In the trusts of which I am aware, which are represented among the membership of VOCAL, the terms and conditions are broadly the same at the point of the transfer of services and often for long periods of time—five, six or seven years—afterwards. The pay uplift for inflation and the associated terms and conditions remain the same.

In some cases, councils have made a commitment that the trusts will mirror their redundancy policies with regard to workforce planning and management. There is often a principle that staff who are moving over will generally not face detriment at the point of transfer of services. We are clearly in challenging times, and those issues must be reconsidered every time a management of services agreement is renegotiated, but the sentiment is often there.

10:15

Joan McAlpine (South Scotland) (SNP): Following on from that point, can you enlighten me as to whether the trusts are subject to European procurement law?

Mark Bramah: It depends. Leisure services are part B services under European Union procurement, so they are not subject to the full EU procurement regime although, by and large, part B services have to follow the requirements of EU procurement rules. Most leisure trusts are set up under grant and lease arrangements, so they get an annual grant from the council and have a long-term lease in place. Where that is clear and explicit, the trusts are not subject to EU procurement rules. However, there are a number of trusts—particularly those that were set up a number of years ago—where that is not at all clear and which are, in effect, under contract. If they are under contract, they will be subject to EU

procurement rules. That is an issue for some leisure trusts, particularly as we come to the end of the initial 10-year period of contracts or agreements, and they need to have a look at that. If there is, in effect, a contract with the authority—there are tests for what constitutes a contract—it is potentially subject to EU procurement and may need to be subject to competition. It depends on how the trust is set up.

Joan McAlpine: So, basically, it depends on how trusts are set up. If contracts or agreements are coming up for renewal, they could move to an arrangement whereby they would not be subject to EU procurement rules.

Mark Bramah: Local authorities would need to take detailed legal advice on that. They could not deliberately try to avoid the implications of EU procurement or state aid.

Most leisure trusts receive an annual grant and there are limits to the number of conditions that can be applied to an annual grant. Within a contractual arrangement, there can be much more enforcement with the provider of the service. There are tests for what constitutes a contract. A number of authorities—I am not sure about in Scotland, but certainly in England—have fallen foul of the situation and are having to consider, as the arrangements reach their natural expiry date, whether they need to subject any future arrangements to some form of competition.

As I say, these are part B services. There is private sector provision within local authorities in England and Scotland, but it is not extensive. I suppose that there are issues of risk relating to the wider European context. The issue is very high on the agenda for many local authorities.

Heather Stuart: Through our members—this was borne out in the survey work that VOCAL did—we are aware of an increasing analysis of and trend towards a particular model that resolves and simplifies quite a lot of those issues. There are two drivers for that: one is procurement and state aid, the other is governance and accountability, with a direct link back to the democratic accountability and strategic direction setting of the council. Increasingly, trusts are being set up as companies of which the council is the sole member. From a procurement perspective, that means that, where work has been awarded to an arm's-length organisation, in reality—in terms of procurement and state aid law—that organisation is deemed to be part of the body commissioning the work. That means that it is required to meet all the same procurement and state aid rules as the council, and it means that it is not vulnerable to legal challenge. It also addresses some of the concerns about a lack of sufficiently robust governance and accountability, such as exist within councils.

The Convener: Part of the reason for the trusts that was given at the beginning of your evidence was the financial savings, such as VAT savings, and their charitable status. How do such things sit with that model? Surely such a trust would not satisfy the rules on charitable status.

Heather Stuart: It satisfies the rules on procurement and state aid. As a company limited by guarantee with the council as a sole member, it is also still allowed to apply for charitable status. There are sole-member companies that have been established out there. It can still have charitable status and—if it works out best for it—it can still apply for partial VAT exemption.

Mark Bramah: A number of authorities are looking at that model. For instance, Wolverhampton City Council is looking at a similar arrangement. Local authorities can grant discretionary relief to those bodies whether they have charitable status or not, although the financial benefits are not as clear as for an independent, separate corporate body such as an industrial and provident society or a company limited by guarantee. Local authorities can still grant some discretionary relief, but such bodies would not get the full mandatory business rates relief. I am not sure about the VAT benefits.

Heather Stuart: They get full non-domestic rates relief on the properties that form part of the lease arrangements and property agreement with the new trust. The additional issue in relation to VAT is that, for quite a lot of the admissions charges for cultural services, a cultural exemption can be applied for. In essence, VAT does not need to be charged on those, with the quid pro quo that not all VAT can be reclaimed. A cost benefit formula would always be considered but, in most cases, going for the VAT exemption is much more cost effective. That is where the perception about VAT savings comes from.

The Convener: The issue is complicated, to say the least.

Heather Stuart: It is.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. I have two questions. First, do you get any indication from local authorities that one particular model is favoured for cultural trusts? Secondly, how would we measure the success of cultural trusts?

Gerry Campbell: The cultural trust model is relatively new in Scotland, and the 32 local authorities are talking to one another about different approaches. Heather Stuart referred to the issues of procurement, sole-member companies and how boards are selected. The process is pretty much in its infancy. My experience is that, when South Lanarkshire Council was considering the established sport

model, it considered whether aspects of that could be tailored to work with cultural facilities within the existing arrangements in relation to the board, governance, accountability and quantitative and performance management issues.

In South Lanarkshire, the model has now been established for 18 months and, although there have been changes, on the whole, things are pretty much as they were, with additional services having been brought in. Obviously, in other areas of Scotland, stand-alone organisations have been established but, over the past few months, five or six councils have talked to us in South Lanarkshire about whether they should establish a separate body or whether there are options for integration. Obviously, I can speak only about the South Lanarkshire model, but our view is that integration into what already exists works well, as it avoids duplicating many of the issues that we have heard about to do with procurement and governance.

Mark Bramah: The two most common models of trust are a charitable trust that is a company limited by guarantee with a facility-based approach, and an industrial and provident society, which is a community benefit company—not a staff-owned mutual, as that would not get the advantages of a leisure trust. Leisure and cultural trusts are a pretty new phenomenon, but there are a number of quite large ones. Local authorities have considered going beyond the purely facility-based approach or adding community facilities such as libraries, museums or parks and open spaces. That was done with Wigan Leisure and Culture Trust, which has been mentioned, and a couple of local authorities in Scotland have included parks and open spaces in leisure trusts, but that is not universally true of leisure trusts. There are no financial benefits to a local authority from including parks—in essence, all the financial advantages to local authorities from trusts are based on facilities. However, local authorities are increasingly beginning to consider that approach. Whether it is the right approach for an individual authority really depends on the business case.

I have an observation on the measurement of performance. I just want to put it on record that I think I was slightly misquoted in the piece on the issue in *The Scotsman* this morning, which seemed to imply that I said that, because of the financial advantages, trusts are better than in-house provision. The business rate advantage is a clear financial advantage for leisure trusts, but there is no clear evidence that trusts perform better than other forms of service provision. From the performance networks data—taking usage as one proxy, although other measures could be used—there is nothing to suggest that trusts outperform in-house provision in terms of usage, throughput or participation. It very much depends on the circumstances. We will still find high

subsidy but low levels of usage in areas of Scotland with high levels of deprivation, and vice versa in other areas. The pattern depends on the situation.

There is also an issue about how performance is measured. There should be a clear link between the public subsidy for leisure and health or social outcomes. That is a weak area that, in fact, has been identified by Audit Scotland, although I should add that it is not evident in every authority and that some are good at making those links. Nevertheless, the issue certainly needs to be addressed, because the whole point of public subsidy for leisure is to achieve wider social outcomes.

Liz Smith: Is there a danger in that? Given that, as Mr Black pointed out in his opening remarks, the financial driver is very much the reason behind trusts, does it become rather difficult to measure some of the qualitative values of how trusts may help a local community? Obviously you can measure numerical figures such as participation and the benefit of cost savings, but is there a danger that we might overlook the qualitative values and not look at the benefits that a community could gain through a trust rather than through the normal local authority provision?

Mark Bramah: I am sure that Heather Stuart will want to come in on this question, but I think that, although there are ways of addressing it, there is a clear danger in that respect. After all, if you reduce public subsidy for leisure, the organisations that you set up will need to become much more commercially focused or service rationalisation will have to be considered. Unless you get that balance right and unless there are clear arrangements for monitoring performance and targets that are linked to the local authority's objectives, there is a danger that what you suggest will happen. The issue needs to be addressed because it is not clear whether the point applies to all leisure trusts.

Heather Stuart: The danger is no greater than any danger arising from the services being delivered by local authorities at the moment, particularly given the links to the single outcome agreements, evidencing wider impact and so on. In fact, if you read some of the tomes for service contracts, you will see that they are having to become increasingly sophisticated in order to address all the issues that we are discussing. Given that the key performance indicators and outcomes in local authority culture and leisure service plans that were important to elected members in local authorities will inevitably become what the trust is asked to deliver, you might introduce other trusts to deliver some of those outcomes, improve efficiencies and increase income-generating potential. Nevertheless, there

is usually an absolute read-across; at the end of the day, local authorities are reliant on trusts to deliver the statutory performance indicators that the Accounts Commission requires of them.

Mark Bramah: I realise that I am hogging the discussion, but I think it worth pointing out that the 2010 Audit Scotland report identified the issue of measuring performance and having clear outcomes. More than 500 sport and leisure facilities come under the APSE benchmarking model, and the important point is that local authorities must be able to compare and report effectively on their performance both nationally and locally to ensure that they are accountable to elected members and communities.

Liz Smith: I have a final question. Given the pressures—particularly financial ones—that local authorities are undoubtedly under, might one argue that trusts have the benefit of being able to focus more on specific issues than local authorities, which, after all, have so many other things to do?

Gerry Campbell: Very much so—and particularly with regard to setting clear objectives and being very clear and articulate about how they wish their performance to be monitored and fed back. With the model that we now have in South Lanarkshire, the monitoring of performance both quantitatively and qualitatively has increased significantly from what was previously the case. Many people who manage a service look at it and think, “I’d like to make some changes”; they get the opportunity to stop the bus, make the change, put something different in place and manage things differently. That has certainly been our experience.

Liam McArthur (Orkney Islands) (LD): Obviously it is accepted that there is a financial driver behind that trend. However, it was suggested in response to an earlier question that one of the advantages might be the unlocking of what one might call an entrepreneurial spirit.

Mr Bramah told us that there is no real indication of how performance has been improved through trusts, which tends to contradict your suggestion that, in certain instances in South Lanarkshire—not across the board—entrepreneurship has flourished in a way that it did not previously. Can you give any evidence to substantiate that statement?

10:30

Gerry Campbell: Absolutely, I can. The situation is different in different areas and I can speak only from my experience, but I am also a member of the Sports and Recreation Trust Association—Sporta—which is the leisure trust organisation within the United Kingdom. I will talk

about my experience in a moment, but will first of all take a couple of minutes to explain a little bit of background.

When the transition was taking place and people were advised that they would transfer from the employment of the council to that of the expanded organisation, they were clearly concerned about whether their terms and conditions would be the same or inferior. I took the time to go round all the areas; I visited all the libraries, went to as many of the regional halls and cultural facilities as possible and, first of all, assured staff that their terms and conditions would not be inferior to those that they had—not that they were great to start with, but they would not be any different. People said that that was a great weight off their shoulders.

We then told staff that we were not asking them to do anything radically different, but would ask for a bit more of a stretch on integration and promoting other services. We could ask ourselves why people were not doing that when they were employed by the council. I do not know, because I did not manage them then. We now manage them, and my experience is that, when a person walks into a library—we have 25 libraries in South Lanarkshire—the staff will, in addition to serving and providing information, openly talk about and promote other services. We have 1,200 staff; my having 1,200 staff taking that approach in 165 locations throughout South Lanarkshire is extremely good for promotion of, and continuing visibility of services.

Another key piece of evidence is that, at the time of transfer, absence levels among the staff who transferred were probably 5 per cent or above. However, in the 18 months over which we have transferred staff in, we have achieved an absence rate of 3.4 per cent, which would hold its own in the private sector and is up there with some of the best levels that exist in the public sector.

The final thing is to say what we hear when we ask staff. We have spent quite a lot of time on staff engagement and have asked people what they feel, and they feel a little bit more empowered. We work with the same budgets and the work is not radically different, but people are in a smaller organisation—1,200 people, as opposed to 15,000 in the council—and feel that they are a little bit more involved in their own destiny.

Liam McArthur: Is that reflected in service user feedback?

Gerry Campbell: Yes. We measure customer satisfaction. There has been a small increase in the use of libraries and cultural facilities. The service was already well run and we have used the fantastic experience in South Lanarkshire to

tinker with some of the issues. We are only 18 months into running the service, so I would probably like to be asked the question five years from now, but we are, at the moment, seeing small increases in the service's performance.

Douglas Black: I do not recognise this entrepreneurial spirit that leisure trusts are supposed suddenly to have created. Local authorities have put in place measures on the issues that Gerry Campbell identified, such as absence management and decentralisation, and have run them for many years. Decentralisation has been on the go in local authorities for the past 15 or 20 years; it is nothing new to consider delivering services in single locations, whether they be libraries, housing services or social work services. It is a common model in local authorities and has been for a long time.

One issue that we found is that when they were established, many leisure trusts business cases were not robust enough. We must question some of the set-up costs that, in some instances, meant that a leisure trust did not perform as well as it should have done or did not perform to the expectations that the council had when the trust was set up. There are real concerns about that and I do not, I am afraid, recognise the improvements that Gerry Campbell says leisure trusts have made. Local authorities have improved on those issues year on year to the extent that their performance on them is comparable with that of any other public sector body and that of the private sector.

Mark Bramah: If I could make an observation, convener, I will quote the English Audit Commission, although it backs up what Audit Scotland has said. It said that

"No single management option delivers the best overall value for money, or consistently results in more investment or higher levels of participation."

I acknowledge some of the points that Gerry Campbell made about what is happening in South Lanarkshire, but I concur with Douglas Black. APSE's point of view is that we are talking about the way in which services are organised, managed and led.

Although it does not relate specifically to sport and leisure, we have just produced a piece of research on municipal entrepreneurialism, which looks at 10 or 11 case studies on how local authorities have been innovative and have delivered entrepreneurial services. It is entirely conceivable that local authorities can do such things without using an arm's-length organisation. It is down to the management and leadership of the authority and to how engaged are the staff within it.

The Convener: I just want to check one point with Mr Campbell. Are you really saying that the move from local authority control to trust control makes people healthier?

Gerry Campbell: I am—very much so. Obviously, I can only speak for the South Lanarkshire example, but sport and physical activity, or engagement in cultural activities such as attending art classes and so on, contribute to people's life changes. Such case studies are reported in the media all the time. What we do, the partners with whom we work, and the feedback that we receive from people who use the services that we provide on behalf of South Lanarkshire Council all show that we make a positive contribution to people feeling better mentally and physically.

The Convener: I was not asking about the service users. You said that the staff absence rate has dropped from more than 5 per cent to around 3.4 per cent.

Gerry Campbell: Yes.

The Convener: Why would being under trust control rather than under local authority control cause that? You said yourself that it is, in effect, the same organisation running in the same place with the same staff.

Gerry Campbell: We are a smaller organisation than the council. I will give you the two comparators. The council has 15,000 staff; it is a big organisation and it is a big job to manage change in it. We are a smaller organisation that is probably a bit tighter and we are closer to the staff. We work very hard on our communications. I can only tell you that people will say that their morale and levels of attendance and commitment seem to be slightly higher than they were when they were employed by the council. That is evidenced by the fact that staff absence levels have improved to a good level. That is our experience.

The Convener: Mr Black, do you find that that is true generally across your membership, and not just among those in South Lanarkshire?

Douglas Black: I do not want to comment specifically on South Lanarkshire, but I do not think that it is the case. I do not know about the absence management procedures that South Lanarkshire Council has in place and how draconian, or otherwise, they are.

When we speak to our members and stewards in such areas, we hear quite the opposite—that the morale of staff in leisure trusts is generally not particularly good. They see programmes of service closures—I am not saying that it happens in every trust, but libraries are a classic example. In Falkirk, for example, six months into the recently established trust, the opening hours of the libraries

were slashed. That is a real concern not only to members of staff, but to the community. In other trusts, we have seen terms and conditions being cut—quite severely in some cases.

I do not think that we can say that the move to using leisure trusts has improved morale; that will not be the experience up and down the country. It might be so in South Lanarkshire, but it will not be a general theme.

The Convener: Does Heather Stuart want to make a brief comment?

Heather Stuart: I hear all that. All I would say is that we need to understand the driver of some of what is being said. Is it driven by the reduction in resources that are available to allow local authorities to deliver culture and leisure services, or is it purely associated with the change to the delivery model?

Our experience in local government is that the cuts are coming and need to be made. They are having an impact on culture and leisure services, as they are on all other services, and it is important not to imply that they are happening because of the move to trusts.

Marco Biagi: Do you think that the arm's-length structure makes the services more vulnerable when councillors are meeting to decide where cuts will be made?

Heather Stuart: No, that is not my impression. I do not think that that makes it any easier or any more difficult.

It does not appear to me, looking across local authorities, that local authorities having culture and/or leisure as a political priority is being impacted on by the decisions that are being made. In fact, in authorities that I have worked in or am aware of, the big driver for the move to trusts has often been—as I said right at the beginning—the need to secure a future for services. It is about not just the financial savings but—as has been commented on—creativity and innovation. There is evidence of that.

I am in the interesting position of having served for four or five years at Perth and Kinross Council as a head of service and, over the past four weeks, I have been concentrating on setting up a new cultural trust in Fife that needs to be delivered by 1 October. I am right in the middle of all this and, like Gerry Campbell, I speak from personal experience, having gone round all the facilities. Staff have been through a period of real uncertainty but are now starting to talk about the opportunity. Through appropriate encouragement, they are starting to come up with things. There was a strong service previously, but some things will be more flexible and easier for them to deliver, which will benefit service users. The staff have

asked for things to happen where things have not been as easy to deliver because of competing priorities.

There is an opportunity, but it is horses for courses. I agree that there should not be a leap into using the trust model. There needs to be a proper options appraisal that reflects the tailored, specific circumstance of a local authority, the political priorities and the cost benefit of the model.

Mark Bramah: Can I make an observation, convener?

The Convener: You can if you are very quick, Mr Bramah.

Mark Bramah: The pressures on local authority budgets will make local authorities look at the financial advantages of the trust option. That is one element. Removed from the council, the finance becomes an annual grant and local authorities tend to review it. I am not talking just about leisure trusts. Over time, the link with the council diminishes—there is a natural progression and there is an element of political input to leisure diminishing. The research that we have done in England has shown that.

Neil Bibby (West Scotland) (Lab): We have heard this morning about the differences between cultural trusts in terms of workers' pay and conditions and customer satisfaction. There has been a lot of focus on the differences. Can you summarise what are currently the common benchmarks for cultural trusts, what you think should be and how they can best be achieved?

Heather Stuart: I covered some of that in an earlier answer. At the moment, the performance frameworks that are associated with cultural services tend to be the statutory performance indicators, such as the number of users of museums or library services per 1,000 of the population, book borrowing from libraries, internet access and a range of other things. All the measures that are currently used by local government to assess the effectiveness of their cultural services need to be carried across into trusts.

I agree with the earlier comment that the move to trusts perhaps provides an opportunity to look more creatively at the performance measures and to think about how we might build in some more qualitative measures. That has already started to happen in some local authorities and may be easier to shift across. It also makes sense to compare performance trends prior to the move to trusts and following the move. That will give us a sense of whether there have been the efficiencies or improvements in performance that were intended.

It is also important that there is a consistent way to measure and compare the quality of culture and leisure services across Scotland. One of the things that has worked against culture and leisure services is the fact that there is no equivalent inspection regime to the “How Good is Our School?” and “How Good is Our Community Learning and Development?” model.

10:45

VOCAL has been working with Education Scotland and the Convention of Scottish Local Authorities to develop the “How Good is Our Culture and Sport?” model. We can roll that out irrespective of where services are being delivered and it will start to give us more meaningful benchmarking information that is driven ultimately by real, good-quality validated self-assessment. That means that we are taking account not just of strategic leadership, but of the quality of front-line service delivery and the areas of improvement on which the focus should be.

Mark Bramah: From APSE’s perspective, the public subsidy for sport and leisure—to return to my earlier point—pays for health outcomes and wider community outcomes. If there are to be performance measures, clear links are needed between the public taxpayer money that goes into leisure, and the achievement of outcomes. Whether we are addressing issues such as obesity, children’s active participation in sport or links to disadvantaged communities or ethnic minorities, those measures should be linked to key outcomes.

There should also be an operational set of measures around facilities management; we benchmark a lot of data on the performance of individual centres. However, the important dimension with regard to public sport, leisure and culture is that we need to make a link between the public money that is put into that area and the outcomes that are being achieved at a higher level. That link is made in some authorities, but we could be a lot better.

Douglas Black: I agree with Mark Bramah on the public money issue. We have heard that trusts are set up on the basis that they should be democratically accountable, and I agree that they should be. They should also feature in the local authority’s priorities for that area, but that comes back to the political choices that are made. I am not sure that the model allows us to monitor that and to best work out whether the outcomes are being delivered properly. That is a concern.

Neil Bibby: I think that we all want the best possible outcomes for public money. We have talked this morning, and regularly before this, about democratic accountability issues. How can

the democratic accountability of cultural trusts be improved? What performance benefits would that provide?

Douglas Black: In my view, we should have sports, museums and leisure delivered directly by the local authority. The model that has been set up in order for leisure trusts to achieve financial savings means that locally elected members will not form the majority of any board of a leisure or cultural trust. Although there are local authority members, or a member, on the board, they fulfil a different role from that of a councillor within a local authority, in that as a board member of a particular trust they have accompanying responsibilities. There is an issue in that their role in terms of being democratically accountable for the decisions that are made is very much watered down and understated.

Gerry Campbell: I have several points to make on accountability. First, we in South Lanarkshire are trying to ensure that the make-up of the board reflects the services that are provided to communities. We need strong and experienced people who can articulate and take on board issues that may have been raised with them by staff or customers about the range of services that we provide.

Secondly, customers who use the facilities are increasingly aware of and astute about how they can provide us with feedback, whether that is through social media or comments, or just by calling us and letting us know what they think about the services.

Thirdly, the straightforward quantitative data that currently exist tells us that if more people are using our services, and if we are not being complacent and are engaging with them, they are able to tell us whether they believe that the services are the right ones, and whether we are being accountable for the money that we are investing.

Mark Bramah: The obvious point to make refers back to Audit Scotland’s 2010 report, although I offer no view about whether it sets out the right model for a local authority. Due to potential conflicts of interest—for example, if there are councillors on the board—local authorities need to strengthen the governance, scrutiny and transparency arrangements that relate to leisure and culture trusts. There are a number of ways in which that can be done when those organisations are set up—local authorities can influence that process, whether it is through the funding mechanism or the trust’s founding documents, such as the performance frameworks. Local authorities need to take more seriously their scrutiny and governance role in relation to leisure trusts. That applies to any arm’s-length organisation that a local authority sets up,

because there can be weaknesses in the corporate and political governance of some such organisations.

The Convener: A couple of members want to come in, but I am well aware that time is moving on, so can I have short questions? I remind the panel that there is no necessity for everybody to answer every question and of the need for short answers.

Marco Biagi: It might be possible to answer my question with a yes or no. Are the organisations subject to freedom of information legislation?

Heather Stuart: That depends on the model. With a sole member, FOI unquestionably applies. My understanding is that FOI applies to independent organisations by default because much of the information that transfers between an independent arm's-length organisation and a council is covered by the council's FOI duty.

Mark Bramah: The organisations are not subject to FOI as corporate models. However, there are proposed changes to FOI that may bring them within some of the requirements.

Liam McArthur: I am interested in accountability. If you are an elected member and you are sitting on a leisure trust board and it is felt that that trust is not delivering, you will be held accountable by the electorate at the next election. If you are not on a board but you are a part of the administration in the council and that leisure trust is not delivering for the service users, you will be held accountable by the electorate. Whether the services are delivered by a trust or directly through a local authority, where is that lack of accountability felt to exist?

Mark Bramah: The problem for members sitting on trust boards is that their responsibilities are to that corporate body.

Liam McArthur: The electorate does not care about that.

Mark Bramah: I know that but, in strict legal terms, members have a duty to that body. That creates a problem for elected members. There needs to be an increase in the overview and scrutiny of arm's-length organisations across local authorities.

Clare Adamson (Central Scotland) (SNP): I want to dig a wee bit deeper into the relationship between councils and democratic responsibility. The panel has mentioned many advantages—as it sees them—to cultural trusts, for example that the board can have members drawn from different areas of business in the community and there is an entrepreneurial spirit. At the end of the day, the danger is at that if a trust is created, it ends up becoming a finance issue and a finance committee from the council's point of view. If, for instance, the

charitable status changed or the financial advantages changed, would the councils maintain the cultural trusts? Is there a real benefit in having that additional expertise available and the structure there?

Gerry Campbell: In South Lanarkshire—to give you a financial value first of all—the annual saving is about £2.6 million. If that financial advantage was not there, my experience suggests that the council would look closely at whether it wanted to continue with the model, despite the fact that the leisure trust has been established for the past 10 years. I would hope that, in terms of what we have achieved over the past few years, including engagement and all the other associated advantages, there would be clear issues about continuing with the trust. However, I understand that the initial driver was finance, and I am sure that elected members would wish to review that decision if there was no annual saving.

Heather Stuart: Ultimately, it is about the council fulfilling its duty of best value—which is not just the lowest-cost option—in all that it delivers. That applies whatever commissioning or contracting relationships it puts in place.

Although we are focusing on local authorities and the trust model, a lot of the challenges that we are discussing are no different to those that are presented by the arrangements at national level that concern the relationship between central Government and National Museums Scotland or the National Library of Scotland, or any of the other cultural bodies that the Government funds. Some of the same tensions exist around non-departmental public bodies.

Douglas Black: The fall-back position will always be the local authority, if a trust fails or in a situation in which the financial exemptions route is blocked off. If that happens—for whatever reason—the local authority must then determine how or whether it will deliver those services in the future and what its priorities will be.

Mark Bramah: I agree with Gerry Campbell. The decision about continuing with the trust if the financial advantages did not exist may be a local political decision, or it may be down to other organisational factors, but the lack of such advantages would certainly diminish the reasons for local authorities to be involved in leisure trusts.

Jean Urquhart (Highlands and Islands) (SNP): My questions are on local authorities and the relationship between governance and accountability. Many of the supplementaries have already covered that area, but I would still like to ask a couple of questions.

The cost of governance is an issue. If the chief executive of any of the trusts decided that the job that he or she was doing was much more

important and showed that it would be within budget to pay himself or herself another £25,000 a year, and everybody agreed with that, would it be fine? Is that possible?

Gerry Campbell: No—not in South Lanarkshire unfortunately, although if you have a model I would be happy to take it away. [*Laughter.*]

That is not possible. As I said, we mirror terms and conditions, and we have done so for senior staff, general managers and all staff. The arrangements for performance and review that exist within the council are mirrored for the board, so that could not happen.

Jean Urquhart: What was possibly the first arm's-length organisation for arts and culture was based in Glasgow, and in the early days the board members were paid. Has that practice now ended?

Heather Stuart: Yes—I understand that to be the case, certainly in Glasgow. In all the trusts of which I am aware, board members receive only reasonably incurred expenses; they are not paid.

Jean Urquhart: We have heard about the issue of local authorities' accountability. I know from my own experience that when a local authority decides to issue a contract to an arm's-length organisation it sometimes stops having such a direct link with developments that are taking place.

What is the advice or the feeling within arm's-length organisations about going back to the local authority on such developments? The monthly or six-weekly report on all the services by council officers no longer exists. There is also an issue with councils that are quite big—for example, Highland Council has 80 elected members but there are only three members on the board of the arm's-length organisation. How should that operate?

Heather Stuart: There are three levels. In setting up what are increasingly robust contracts, authorities need someone who is an expert in contract monitoring to hold the trust to account on what must be delivered. That is the quantitative side of things. You also need a well-functioning relationship between the trust's chief executive and its senior team and senior council officers with related responsibilities or client monitoring responsibilities.

With regard to democratic accountability, I strongly feel that you need some type of committee or sub-committee model where the chief executive and perhaps the board members are regularly given the opportunity to showcase the trust's work, to give performance information and to be held accountable for public money. With those three things in place, there would in many cases be a much more robust scrutiny and

monitoring framework than there perhaps would be for in-house services.

11:00

Mark Bramah: It depends on how the arm's-length organisation is treated. Again, I make no judgments about what is the right or wrong model, but if you treat the organisations as contractors they will behave like contractors. If you treat them as partners, it is different. There is a valid and strong case for engaging the managing director or chief executive of the trust with an effective member of the council's senior management team. The trust needs to be involved not just as the provider arm but as part of the local authority's commissioning approach.

Douglas Black: I agree with everything that Heather Stuart said until her last sentence, when she stated that local authorities might not provide the democratic control that she was talking about. I do not think that that is the case at all. The very nature of local authorities means that that democratic control over in-house services is fundamental.

Gerry Campbell: In the South Lanarkshire model, the council's chief executive is a member of the board and the director of finance can attend board meetings as an observer. That allows a very high level of accountability and scrutiny in addition to the regular performance reports, which largely mirror what was going on before the integration of culture into the trust.

The Convener: Mr Campbell, neither the chief executive nor the director of finance is an elected member. It is not exactly democratic accountability.

Gerry Campbell: I was describing what there is in addition to the elected members that are there. There is a high level of scrutiny—

The Convener: We were talking about democratic accountability; I am not sure that that is quite the same thing.

Gerry Campbell: Sorry—you are right. In addition to what I described, there are three elected members. There is a high level of scrutiny.

Neil Findlay (Lothian) (Lab): In the answer to Clare Adamson's question, we got to the nub of the discussion. To most onlookers, a rates and VAT scam and some clever accountancy would result in people being accused of corporate tax evasion, and that is what this is. It is simple: the trusts are tax avoidance schemes to produce some financial benefit or gain.

The answer to Clare Adamson's question was correct: had the loophole not existed, the four of you would not be sitting here discussing the

model, because it would have never happened. For successive Governments, the loophole has been convenient. The current Westminster Government in particular would, I am sure, like many more services to be externalised and taken down that route.

I want to pick up on Mr Campbell's comment about staff freedoms and flexibilities, innovation and that type of thing. Is that not an argument for reforming the management of the local authority rather than for externalising or changing the structure of the service?

Gerry Campbell: It may be. As I said, I was not managing the staff who transferred over to the trust.

My experience from 25 years of public service tells me that managing 1,200 people in an organisation is—or can be—an easier task than managing 10,000 or 15,000 people. We are a smaller organisation, and we have tighter controls and shorter management spans in how we deal with people. I am giving you the evidence and experience of how the model works in South Lanarkshire. There may well be some issues, but for us it works—and has worked—very well.

Neil Findlay: If that principle is correct and we take it further, is there an argument for housing, social work and other council services to go down that route?

Gerry Campbell: I do not know—I am not able to comment on what goes on in those other areas as they are not my background. My background is in managing sports facilities. We have extended good practices, and I am giving you the evidence that we are hearing from staff. I qualify that by saying that we are not doing anything radically different—it is just about people feeling more engaged and contributing a bit more, and there is evidence that there are small increases in the uptake and users of the services.

Neil Findlay: Are there any other financial issues—not including tax avoidance—arising from how the trusts are funded, such as in how grants are provided, or is the system largely the same in all authorities?

Douglas Black: One issue that we highlighted in our evidence is that many of the business cases for the establishment of trusts point to external funding being available and trusts not being able to access that funding while under local authority control. I am not sure that the evidence on how trusts have accessed external funding would back up those statements, particularly in many of the cases in which the funding that was highlighted as not being available could in fact have been accessed when the organisations were in local authority control. A bit more work needs to be done on how trusts have accessed the external

funding that was a key part of their business case in the first place.

Neil Findlay: Are you talking about private or lottery funding?

Douglas Black: I would think that it is a combination of both.

Mark Bramah: It is primarily lottery funding. There are two arguments, and I will try to put both of them. Sporta would argue that it has unlocked £400 million-worth of investment in leisure facilities through access to the Heritage Lottery Fund and other sources. However, the Audit Commission's report found that there was no evidence that leisure trusts generated significant external funding.

Leisure trusts have problems accessing investment, particularly when they receive annual grants, because banks will not necessarily lend unless there is funding certainty for the future, so there are difficulties. However, one of leisure trusts' advantages is that they have been able to invest more in the refurbishment of facilities where there have been savings on non-domestic rates. In the longer term, there are issues around the sustainability of that approach, and despite some improvements in leisure provision and facilities we still have a largely ageing stock that is in need of significant investment.

Clare Adamson: I do not want to be misrepresented on where my earlier question was coming from. What I want to ask is whether enough emphasis is put on the advantages to the community and the improved service and morale. Does that get a high enough profile in local government, as opposed to the financial issues in the relationship?

Gerry Campbell: It is always good to celebrate success where things have improved and there is evidence to back to that up. We could all do much more to share that and what the practice has been. We are looking at how we try to do that, but it must be seen in the context of all the other issues and challenges that managers face whenever they are managing services day to day. I recognise that more could go on in that area.

Heather Stuart: Where there has been a positive experience in the development of trusts locally, local authorities have continued to roll out the trust model. The rationale for doing that is not solely one of financial benefit—it is based on feedback that they are getting from their communities and service users and the evidence of delivery against wider outcomes.

The Convener: I want to ask Mr Findlay's question again because it raised an issue that is bothering me. If it is such a financial success, cuts staff absence, improves morale and brings lots of

other good stuff, is there anything to prevent local authorities from rolling out the trust model across their other departments?

Douglas Black: Local authorities have statutory functions that they must carry out. Over and above that, we have seen outsourcing, privatisation and the creation of charitable status trusts—in the current climate, nearly every local authority up and down the country is looking closely at that whole agenda. That is very much an issue in how local authorities provide local public services, because the financial climate is driving that agenda.

Heather Stuart: Local authorities are currently looking at three things with the financial challenges: efficiencies, service reduction and whether there is a better way or a different delivery model that will help us to face the challenges. That is not quite the same as putting everything out to trusts. The higher-performing local authorities go through the process and apply the best-value test, but it is true that there are other council services for which the model is being looked at. Waste management is another wider example that I am aware of.

Mark Bramah: I would say no to the convener's question, because the model is quite specific to leisure and culture and the financial advantage is to do with the taxes. Local authorities did not invent the tax system; the fact that they have taken advantage of it in difficult financial circumstances is a pragmatic response to the situation that they face. I do not see the application of the leisure trust model in social work or waste management. There are social enterprise models that work, but the approach is different from in the leisure trusts.

Neil Findlay: The convener asked whether there is anything to prevent local authorities from going down the route of establishing trusts. I think that there is. We saw it in Edinburgh recently, and I am sure that Mr Black will confirm what I am saying. It was proposed to take a number of services down that route, but the public outcry and a massive campaign by the trade unions stopped that.

Douglas Black: Yes. I think that that is right. The point that Mark Bramah made is correct as well, as the model for leisure trusts might not be appropriate for other services, but there are other drivers—whether privatisation, outsourcing or whatever.

The Convener: I thank all the witnesses for attending the meeting. The session has been very useful and informative.

11:11

Meeting suspended.

11:17

On resuming—

Subordinate Legislation

Individual Learning Account (Scotland) Amendment Regulations 2012 (SSI 2012/172)

The Convener: Agenda item 3 is consideration of a negative statutory instrument. No motion to annul has been lodged, and the Subordinate Legislation Committee determined that it did not need to draw the Parliament's attention to the instrument. Do members have any comments to make?

Neil Findlay: Yes. I think that there is an issue. We have received quite a bit of representation from constituents on the removal of individual learning accounts from graduates, and we have some difficulty in supporting that. In particular, people who graduated some time ago have made contact. Perhaps a career change has been involved or there have been new requirements on them to do certain qualifications, and ILAs would assist them with that. A backward step is being taken.

Liam McArthur: What I want to say is probably related to that. The explanatory note that the officials have provided suggests that no impact assessment

"is necessary as the instrument has no financial effects on the Scottish Government, local government or on business."

I understand what is said about the first two, but if ILAs are being more specifically targeted at particular areas I suspect that certain businesses or sectors may be impacted on either positively or negatively through people reskilling and going back into particular professions. That is not necessarily a reason for holding things up, but it would be helpful to know what, if any, assessment has been done on the likely impact on different sectors.

Neil Findlay: People have also commented on the new arrangements for people who are required to get new qualifications for childcare provision. ILAs have been used in that regard as well.

Clare Adamson: It would be great if we could continue to fund everything, but in the circumstances it is absolutely right to target ILAs at people who are low paid, low skilled or currently outwith the workforce.

The Convener: The main point is that no motion to annul has been lodged. Does the committee agree to make no recommendation to the Parliament on the regulations?

Neil Findlay: No.

The Convener: There is no motion to annul, so, effectively—

Neil Findlay: So unless we lodge a motion, we are agreed. Can we record our dissent?

The Convener: There will be no formal vote, given that no motion to annul has been lodged, but I am happy for you to put your dissent on the record if you wish to do so.

Neil Findlay: I do. I record my dissent in the absence of a motion.

Neil Bibby: I do the same.

Clare Adamson: The regulations were made at the end of May, so I am a bit confused about why the issue should arise now rather than in the time that has been given.

The Convener: I do not know the answer to that, but you are right: the regulations were laid before the Parliament on 31 May and members have had since then to ask questions or lodge a motion to annul, but that has not happened. Given the situation and the comments that Neil Findlay and Neil Bibby have made, I reiterate the question. Does the committee agree to make no recommendation to the Parliament on the regulations?

Members *indicated agreement.*

The Convener: As the committee has agreed to take the next items in private, I close the meeting to the public.

11:21

Meeting continued in private until 11:40.

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