

Legal Note – Community Asset Transfer, Ownership and Value issues

1. Introduction

- 1.1. The purpose of this note is to set out the legal issues which arise in relation to the community management of libraries. This note is prepared in a context of radical proposals around libraries by a number of local authorities across England and Wales, in recognition of the public spending restrictions currently being applied to the public sector.
- 1.2. These are issues of some controversy that, particularly in relation to the statutory duty on library authorities outlined below, are already the subject both of litigation and of review by central government. Clearly the outcome of both these processes may affect the content of what is set below, along with the swiftly changing wider context, and it should be read in this light.
- 1.3. “Community management” in this context means the making of arrangements for third sector involvement in the delivery of libraries working with the relevant local authority, by means of either:
 - 1.3.1. a library building or assets being transferred to a third sector organisation (“TSO”) or
 - 1.3.2. a similar transfer to a parish or town council; or
 - 1.3.3. a contract for the delivery of library services being procured by the local authority.
- 1.4. The note explores legal issues which are common to these approaches as well as those which are particular to each.
- 1.5. These include:
 - 1.5.1. the statutory duty to provide library services, and
 - 1.5.2. how this duty may be affected by proposals to involve the third sector in the transfer or delivery of libraries;

2. Community asset transfer and libraries

- 2.1. An alternative approach to the procurement of a TSO to run or manage the library **service**, is the transfer to a TSO of the library **assets**¹. Here typically the authority will transfer both the building in which the library is housed, and the library stock, to a TSO.
- 2.2. In this approach, if the library authority ceases to have any control over how (or, indeed, whether) a library service continues to be provided at the facility – or elsewhere – it must be assumed that the library authority can no longer consider the transferred asset to be part of its strategy to meet its duties under the 1964 Act.
- 2.3. If, however, the terms of the transfer require the recipient TSO to continue to provide a library facility, then this may well mean that the library authority is able to include the

¹ There is extensive guidance on the legal process of community asset transfer generally which is available at <http://www.atu.org.uk/Support/legaltoolkit>

facility in its assessment of whether or not it is meeting its statutory duties, particularly if there is a continued relationship of monitoring or accountability between the authority and the TSO. The terms of any lease or transfer agreement will be key here.

- 2.4. We are aware of proposals involving a library authority which, while transferring individual library buildings to TSOs, is retaining the strategic library functions (for example book purchase, events in libraries) "in house". The terms of the proposed arrangements require the TSOs to co-operate with the authority in the provision of the strategic functions. Such arrangements can only strengthen the authority's case that they are able to meet the statutory duty notwithstanding the transfer of the assets.
- 2.5. However, this may mean that the authority is, in substance if not in name, procuring a service rather than simply transferring assets, which again raises the issue of an appropriate procurement process. We suggest that authorities should seek to be very clear on the nature of their proposed arrangements.
- 2.6. In practice, even if the arrangement is structured as the procurement of services, our view as stated above is that those services will be "Part B" services for the purposes of the EU procurement rules and therefore, in all probability, there will be no requirement to advertise the contract.
- 2.7. We are aware of a proposed transaction in which, notwithstanding the fact that it was expressed as an asset transfer, the local authority undertook a full EU compliant procurement process, in order to avoid there being any issue here. For the reasons stated above, we suggest that this may be a cautious approach.

2.8. Ownership issues

2.8.1. At an early stage in any transfer process the owning library authority will need to consider its ownership of the building asset, including relevant title issues, and therefore its ability to transfer the building.

2.8.2. There are some libraries which were originally provided under the scope of the Literary and Scientific Institutions Act 1854 (LSIA). LSIA provides for a right of reverter; as originally expressed, if the site ceased to be used for the purposes for which it was donated, then ownership would revert back to the original owners.

2.8.3. This right of reversion was modified by the Reverter of Sites Act 1987, which provides that where ownership would have reverted, the current owners (often the library authority) hold the site under a trust for sale under which they hold the proceeds for those who would have been entitled to ownership.

2.8.4. The key issue, therefore, is the question of whether the site has ceased to be used "for the purposes of the institution" (the wording in section 4 of LSIA). We would argue that if:

- 2.8.4.1. The library authority procures a library service from a TSO which may include the lease of an asset; or
- 2.8.4.2. the site is asset transferred to a TSO under terms which require the TSO to continue to provide a library facility;

2.8.5. Then the purposes have not changed, despite the change in ownership, and the rights will not arise. However this will depend on the wording of title documents and

the history of ownership and use in each use, and library authorities should take advice on these issues if they apply to sites which are considered for transfer.

2.9. Value and asset transfer

2.9.1. The library authority will also have to take a view on the value of the assets being transferred. In general, local authorities are required to achieve the “best consideration reasonably obtainable” when they are disposing of land based assets under the Local Government Act 1972. If they are seeking to dispose of land or buildings at less than the market value, then they have to obtain the consent of the Secretary of State for Communities and Local Government.

2.9.2. However, the Secretary of State has issued a number of “general” consents, that is, a set of conditions which, if they apply to a particular transfer, means that a local authority does not need to obtain specific permission to transfer at an “undervalue”.

2.9.3. The most important of these consents in a community asset transfer context is the General Disposal Consent 2003 (“the General Consent”). This permits authorities to transfer land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that:

2.9.3.1. the purpose for which the land is to be transferred is likely to contribute to the “promotion or improvement” of the economic, social, or environmental well-being of the area; and

2.9.3.2. the difference between the market value of the land and the actual price paid for the disposal (if any) is not more than £2,000,000.

2.9.4. The conditions for the consent to apply mirror the wording of the “well-being power” in section 2 of the Local Government Act 2000, although the General Consent applies to a wider cross section of authorities than those actually covered by the Act.

2.9.5. It may be that, in practice, the assets in question do not have a particularly high value – especially if they are subject to restrictive covenants governing use which would restrict any commercial exploitation of the site. TSOs will need to satisfy themselves that, if a viable business plan depends on realising at least some value from library premises, there is nothing preventing them from so doing.

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