The National Archives

In a spin
Guidance on spinning out local authority archive services

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This guidance was produced for The National Archives by Activist Group.

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Chapter 1- Introduction

1.1 Introduction to this guidance

The National Archives have produced this guidance to support local authority archive services and their managers and funders to make the best and most sustainable decisions about the future of their archive services and collections. Much of the advice in the guidance could apply to other services (such as libraries) and other sectors (such as higher education), although the specific service, legal and financial details will differ.

The guidance outlines different models for service spin-outs and their implications for archive services; highlights key regulatory and good practice issues that need to be addressed; and explores business planning and what is different about operating in a spin-out.

Throughout, we have designed this guidance to be practical and user-friendly. It explains the implications of spinning out, but sets it in the context of the other choices available. It is commonly thought that spinning out a service will save money. This might be the case, but only if the spin-out is set up in the right way and if the implications of the choices involved are clearly understood.

This guidance is not cast in stone. It includes case studies of spin-outs, some of which were only launched in 2014, and refers to legislation which has recently been introduced (translating the new EU directive on procurement into national law). As a result, we will update the guidance from time to time and will draw on the experiences of authorities setting up new spin-outs and of the spin-outs themselves. We welcome your comments on the guidance and suggestions for future editions.

1.2 What are spin-outs?

We have used the term spin-out as shorthand for the conversion of an in-house service into a social enterprise, mutual, charitable trust, local authority trading company or a transfer to community management. Spin-outs do not include shared services or outsourcing to an existing private or third sector provider.

As part of the planning for this guidance, we carried out a survey of archivists across the country. We asked people to indicate their understanding of the term 'spin-out'. Over half of respondents had never heard of the term and another 20% said that they had heard it used but had no idea what it referred to. Although people are getting used to talking about alternative service delivery models, spin-out is not a term that has yet taken hold in the sector. It is, however, becoming much more commonly used and has the benefit of being a simple and short phrase.

The purpose of this guidance is to explain the process of spinning out and the different forms that these organisations can take. The range of terms used to describe them can be confusing and are often overlapping. Overleaf are a few brief descriptions of some key terms, all of which will be expanded on later in the guidance.

Model	Summary
Charitable Trust	The term charitable trust is a generic term used to describe an organisation which is registered with the Charity Commission or otherwise recognised in law as being charitable. The trust can operate through either grant conditions or contracts. Charitable trusts have a proven track record in managing leisure, arts and cultural services.
Community Management	This term is used to describe the involvement of members of the community or of community groups in the ownership and control of an organisation (which could take the form of a charitable trust, mutual or social enterprise) to deliver services spun out from an authority.
Local Authority Trading Company	An authority creates an arms-length company which can trade and/or provide services, allowing a more commercial approach. If certain principles set out in the Public Procurement Regulations 2015 are met, there is no need for a procurement process when providing services to the owning authority.
Mutual	The word mutual is a generic term for a business which is owned by its members or otherwise has significant member engagement in strategic decision making. These members could be employees, members of the community, service users or a mixture. A mutual can seek charitable status.
Social Enterprise	A social enterprise is the generic term for any business or service with primarily social objectives whose surpluses are principally reinvested for that purpose in the community, rather than being driven by the need to maximise profit for shareholders and owners.

Spinning out a service from a local authority is not straightforward as we will explain later in this guidance. Setting up a new body to run the service is a complex and extended process needing resources, commitment, thoroughness and specialist expertise.

1.3 Case studies

We have included five short case studies in the guidance, summarised below. To navigate straight to the case study, click on the headings.

Case study 1: spinning out together

The South West Heritage Trust was created by Somerset and Devon county councils. The Trust is a not-for-profit company limited by guarantee and has charitable status. The trust took over the management of the services in 2014.

Case study 2: taking control of your destiny

City of York Council became an early member of the 'Cooperative Councils' movement in 2011. Explore York is believed to be the first staff-led mutual library and archive service in the country to be spun-out from a local authority.

Case study 3: creating a trust with critical mass

The Coventry Heritage and Arts Trust, established in 2005, merged in 2013 with the Transport Museum Trust. The enlarged trust, Culture Coventry, includes museums, archives and local studies to create a broader heritage offer.

Case study 4: an archive service that's core business

Like all the City of London's services, London Metropolitan Archives (LMA) went through a service review process and was not considered to be a service that should be spun out. LMA has a budget of over £3m and 80 staff (full-time equivalent). With 100km of archives, LMA is the second largest archive organisation after The National Archives.

Case study 5: a winning combination of track record and critical mass

Vision Redbridge Culture and Leisure was originally established as a sport and leisure trust in 2007. In 2010, heritage services including the museum, archive and libraries were transferred to the trust, along with parks and open spaces. The Trust has an annual turnover of £18m and 619 staff.

1.4 How to use the guidance

This guidance provides a general summary of the key issues that need to be addressed when considering the spin-out of an archive service. However, since an archive service is unlikely to be spun out on its own, we provide an overview of the general issues that could apply to a range of different services.

We then examine the specific issues that need to be addressed when considering the implications for an archive service. However, while these are important, the success of a spin-out will be determined primarily by whether it is part of an organisation which has a sound business model and which is well led.

The guidance is written to provide an overview of a complex subject and you can use it in three different ways:

- Skimming the overview of each section of the guidance.
- Diving into greater detail on specific issues.
- Reading it in depth.

We also provide suggestions for further reading, explaining which parts of those documents are most relevant.

This guidance is not designed to provide a comprehensive answer to every question you may have and should not be relied on as the sole basis for decision-making. A number of the issues, such as procurement and taxation, are complex and must be carefully thought through. **Specialist legal and financial advice is essential for any plan to spin out an archive service.**

1.5 How the guidance was developed

This guidance was produced with the help of archivists across the country who responded to the survey we conducted and with the particular support of a steering group made up of archive specialists and engagement managers at The National Archives.

The guidance was designed and drafted by **Activist Group** who are specialists in commissioning and sourcing. The Activist team also interviewed representatives from a range of organisations with an interest in spin-out policy.

The contributors to the guidance are listed in the Acknowledgements at Appendix 1.

Case study 1: spinning out together

Organisation

The South West Heritage Trust has been created by Somerset and Devon county councils. The new organisation is a not-for-profit company limited by guarantee and has charitable status. The trust took over the management of the services in November 2014.

Summary

The two county councils worked together to create a new charitable trust to manage a number of cultural and heritage services, including their archive services. Somerset began working on exploring alternatives for their services in 2012 and Devon approached Somerset in 2013 suggesting a joint approach.

Scope

The trust operates Devon's archives and local studies and Somerset's museums, archives, local studies and historic environment services.

The new trust has an initial annual net revenue budget of £2m and 80 full-time, part-time and temporary staff. The trust has agreed initial grant funding from the two county councils for five years.

What's unique?

The trust is the first cultural and heritage trust to have been created jointly by two authorities and is open to the possibility of expanding further.

Results

The councils expect that the new trust will be a more flexible organisation that is able to focus more directly on the needs of its communities and customers. It is also hoped that the new trust will be better able to raise funds externally and this has reportedly already been demonstrated by donors being willing to provide funding that they would not have given to a council. There will also be savings, including on business rates.

Key learning point

Janet Tall, Somerset's Head of Archives and Local Studies (who project managed the trust's creation) said: 'You need to decide which are the important issues you really need to get resolved for the trust to succeed and which ones you can live with. You have to prioritise what you absolutely must get agreed.'

For further information

For information on the project, the councils' reports can be found via this link.

Chapter 2 - Why spin out?

2.1 What's driving this new approach?

Overview

Local authorities have long experimented with new approaches to service delivery. This has been driven by:

- An interest in how new models of service delivery can deliver better value for money.
- The adoption of the principles of commissioning.
- The need for savings to meet challenging financial targets.

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New models of service delivery

In their attempts to improve service delivery and achieve better value for money, authorities have introduced performance management, new technology, customer service techniques and efficiency programmes. Sometimes these changes have been driven by local political priorities, and sometimes by central government.

This process of change has also included the examination of new ways of organising the supply of services. Over recent decades, authorities have experimented with a variety of alternatives to the direct management of services and most have embraced one or more of the following models:

- Outsourcing to the private and third sectors.
- Shared services in collaboration with other authorities and public bodies.
- Creating arms-length companies to run services.
- Spinning services out into charitable trusts.

More recently, there has been growing interest across the public sector in the spinning out of services into staff and community-led mutuals, a policy encouraged by Government and a number of local authorities.

Commissioning

Commissioning is the name given to the set of management practices used to work out how to ensure the effective development and delivery of public policy.

Commissioning is a process for deciding how to use the total resources available in order to **improve outcomes** in the most efficient, effective, equitable and sustainable way. Commissioners 'buy' services in-house or from providers in the public, private or third sectors.

The language of commissioning has taken hold in most authorities but the experience has not always been consistent. Too often the word commissioning is conflated with procurement or the contracting out of services. This has led to it being

criticised as a practice that is ideologically driven – importing a market mechanism into the production of public goods.

Whatever its limitations, the process of commissioning is helpful in understanding the steps involved in deciding whether to spin out a service. Instead of jumping straight to a solution (eg a spin out) commissioning offers a mechanism for an organisation to address fundamental questions about *what* it is seeking to achieve, *why* and *for whom*. Only once these questions are thought through can the questions about *how* be asked and properly answered.

Commissioning is therefore a strategic policy-making process rather than just a procurement exercise. And it is not a one-off process. Instead, the commissioning cycle is a **continuous process** of analysing, planning, doing and reviewing services against the desired outcomes:

The commissioning cycle
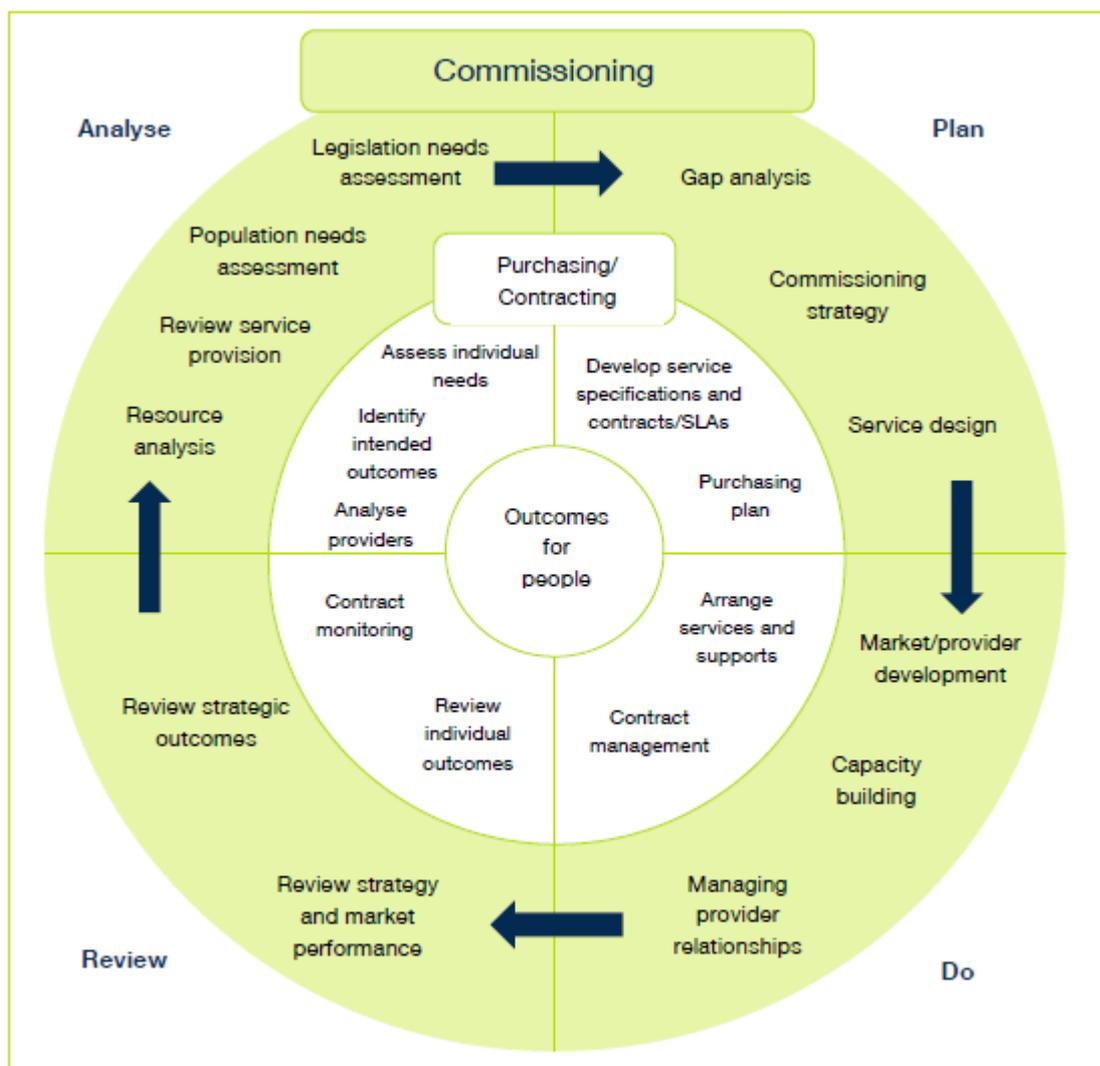
Source: Compact Voice (2013)

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Even if an authority chooses not to use the language of commissioning, it will tend to face the same challenges and take a similar approach to deciding the best solution.

Local authorities are having to find creative solutions to the funding issues that face them which might mean a greater focus on preventative services, or more joined-up approaches to service delivery. Whatever the outcomes and objectives they want to achieve, they will need to make a decision about the best mechanism for delivering those goals.

The pressure for savings

The Barnet 'Graph of Doom' originated as a PowerPoint slide in 2010 suggesting that within 15 years the north London council would be unable to provide any services except adult social care and children's services. No libraries, no parks, no leisure centres – not even bin collections. Although the slide was one authority's scenario produced to help them make decisions about future spending, it illustrated the challenges facing public services: how to deal with the pressures of increasing demand (for example as a result of demographic changes) while having to reduce expenditure.
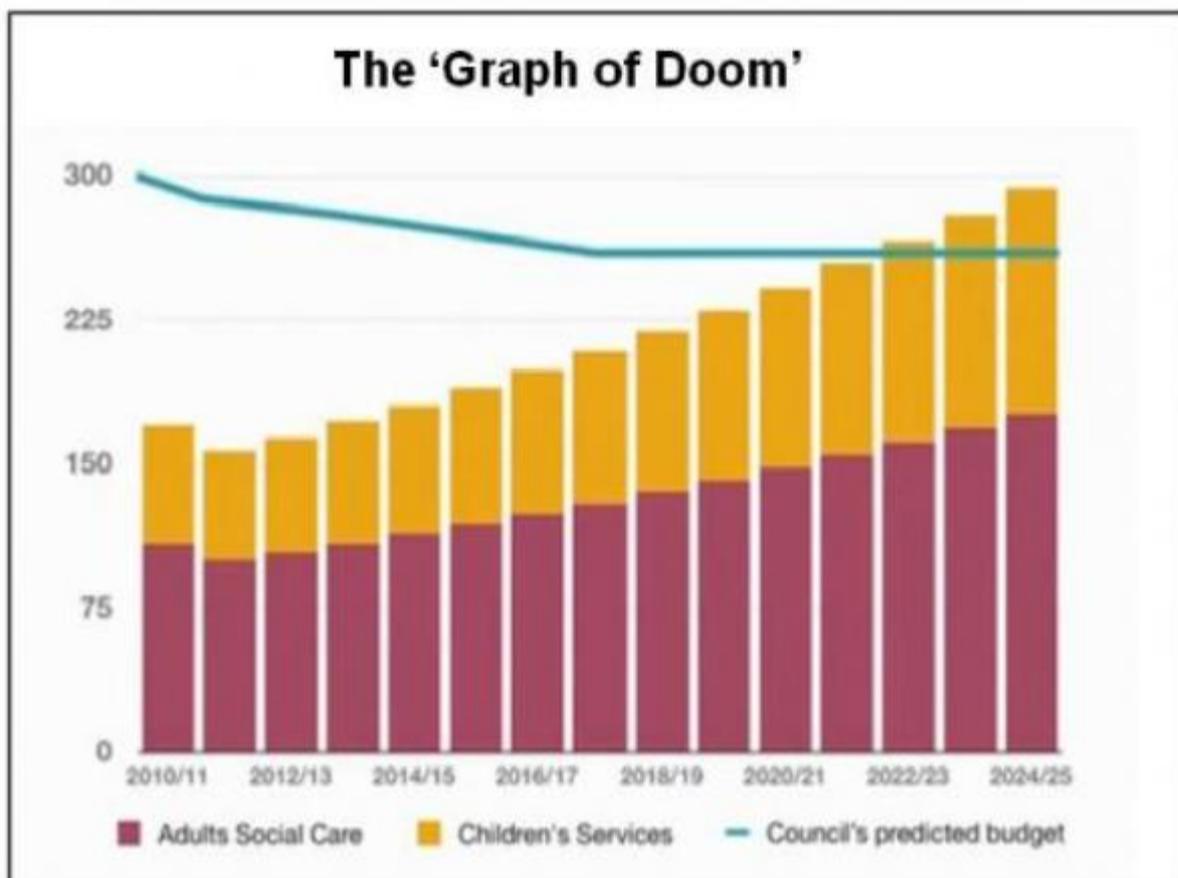
The 'Graph of Doom'

Source: London Borough of Barnet (2010)

The concept of the graph of doom has been replaced by the analogy of a financial 'cliff edge' in which an authority cannot even fund its basic statutory responsibilities.

There have been examples of authorities struggling to balance their books and it has been suggested that others may face similar problems.

With decreasing resources and increasing demands, local authorities are finding that they have exhausted the potential for incremental efficiency savings. The challenge now is no longer to do more with less, but to innovate and do things differently with less.

Archive services are not alone in facing this challenge; services across the board are being remodelled to reflect the new circumstances. Archive services have recognised that they are not being picked on - councils have to save money by finding new ways of meeting their responsibilities.

Further reading
• Compact Voice (2013) Understanding Commissioning and Procurement - *a summary of the commissioning cycle can be found on pps 6-7.*   • Hywel E. Roberts (2014) Independent Trust and Community Libraries in Wales - *research into community and independent Trust libraries in Wales. The Executive Summary can be found from p3 onwards.*

2.2 Choosing to spin out

Overview

There is growing interest in the potential benefits of spin-outs, but spinning out is just one of a number of options. In this section, we examine:

- The different sourcing choices open to authorities.
- Why interest in spin-outs is growing.
- Who might initiate a spin-out.

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Choices, choices

There is a bewildering range of options for authorities to consider when examining alternatives to direct service delivery. The perception that there is only a binary choice between private and public provision is no longer true. Increasingly, the responsibility for providing services is shared: the third sector is playing an increasing role in delivering services; and more services are being transferred to community management. The sourcing options are becoming more varied and with more permutations.

Put simply, there are four broad sourcing options open to local authorities: make, buy, share or divest:

Table: the four sourcing options

Make	Buy	Share	Divest
- In-house delivery - Arms-length company	- Outsourcing to private sector - Outsourcing to third sector - Private sector joint ventures	- Shared services - Shared management - Public sector joint ventures	- Transfer to community - Conversion to mutual or charitable trust - Devolve to district or parish - Closure

Source: Bohl, E. (2012)

While these sourcing options are presented as distinct choices, the alternatives to in-house delivery (and closure) will all involve a contract or legal agreement and some form of specification or service level agreement. The Public Procurement Regulations will also need to be considered and a procurement process may also have to be undertaken. A number of authorities have chosen to spin out a service with a grant funding agreement in place rather than a contract. A funding agreement, particularly with a charitable spin-out, will tend to be less prescriptive and detailed

than a contract. **Throughout this guidance we have generally referred to a contract rather than a grant funding agreement. The same issues raised will need to be considered, but their treatment in a grant funding agreement will tend to be less detailed. Legal advice must be taken on the procurement rules and the choice of approach to the legal framework for the spin-out.**

The choice of option is unlikely to be based on financial considerations alone. Instead, a variety of complex judgements will be required until the right option emerges that is most likely to achieve the outcomes sought by the council. We examine how to conduct an option appraisal in section 3.3.

The growing interest in spin-outs

None of the sourcing options available offers a straightforward guarantee of success and each model has been seen to be subject to failures as well as successes. The growing interest in spin-outs has been driven by a perception that they can overcome the problems associated with other options and has been encouraged by the perceived success of the 'John Lewis model'.

Spin-outs have been argued to have a number of particular advantages, such as better productivity and staff motivation; a stronger community focus; and the retention of profits for the benefit of the locality. This belief is reflected in the 2010 Coalition Government's Open Public Services White Paper which included a commitment to offer public service staff:

> *'New opportunities to innovate, improve and inspire; and encourage public sector staff to start their own enterprise.'*
>
> *Source: Cabinet Office (2011)*

Local authorities have for many years spun out leisure services in particular, persuaded by the benefits of converting to charitable trusts and mutuals. The growth of Greenwich Leisure Limited (GLL), the first spun-out leisure mutual in 1993, inspired others to follow. For councils looking to maintain services with reduced costs, there was (at that time) an immediate financial benefit from savings in National Non-domestic Rates, whilst maintaining some degree of influence through nominations to the board of trustees.

Who might initiate a spin-out?

Spinning out can be triggered by either choice or necessity. The pressure to save money is helping to create an environment in which councils are having to look afresh at the way in which they organise the delivery of services. Every council is continually reviewing all its services, whether through more narrowly focused service reviews or broader commissioning reviews.

The reported advantages of spin-outs have contributed to a number of authorities adopting policies which positively encourage mutualisation. In some authorities every service has been reviewed to assess whether it might lend itself to a spin-out, with staff encouraged to come forward with proposals.

Such spin-outs may be initiated by managers and staff, sometimes in collaboration with service users. The reasons for managers and staff pursuing a spin-out will vary. Some will be driven by a desire to take a more direct role in running their own organisation; others may feel a spin-out will help to protect or shelter a vulnerable service.

Staff themselves or the community might also decide to try to initiate a spin-out. The Community Right to Challenge was introduced in 2012 and allows interested groups to submit an expression of interest to bid to run a service (see section 5.1 on how to access support for the Right to Challenge).

However a spin-out has been initiated, it will not succeed without encouragement and support, and the local authority will need to ensure that the spin-out is set up to succeed. The process for setting up a spin-out is explored in more detail in Chapter 4.

Further reading

- Mutuo and Lambeth Council (2011) Mutual Business Detector - *designed to help identify services which could be converted into mutuals. The questionnaire starting on page 9 offers a diagnostic.*

- Cabinet Office (2011) Open Public Services White Paper - *Chapter 5 on page 39 outlines the commitment to diversity of provision and encouraging public sector mutuals.*

- Bohl, E. (2012) When the Salami's Gone - *explains the main sourcing options from pps 44-62 and includes a short case study on Greenwich Leisure Limited on page 55.*

- Stephen Rolph, Owain Lloyd-James, Will Holborow, Charles Wagner (2014) Pillars of the community: the transfer of local authority heritage assets - *useful advice on when and how to transfer heritage assets from public to community ownership with section on "Asset transfer: the local authority perspective" from p7 onwards.*

- The Information Commissioner's Office (2015) Transparency in outsourcing - *overview of why transparency in outsourcing matters, containing suggestions of practical steps for readers to follow. Includes a bite-size executive summary on p3.*

- The Information Commissioner's Office (2015) Outsourcing and FOI - *user-friendly guidance that could be useful for archives services to reinforce the points they need to make about local authorities retaining FOI, DPA and other information responsibilities.*

2.3 Different legal forms of spin-out

Overview

The terms mutual, social enterprise and charitable trust are generic terms used to describe a range of different organisational types, each with their own particular legal status. In this section we examine:

- The main legal forms of organisation and their principal distinctions.
- The importance of making the right choice when spinning out.

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The different legal forms of spin-out

An organisation that has been spun out of a local authority can take various different legal forms, but the final choice should be informed by what the authority is trying to achieve. The council's choices will be determined by the answer to a number of key questions of policy, including its attitude to control, employee and community ownership and its appetite for savings and risk. These issues are explored further in Chapter 3.

The council will enter into an agreement with the newly spun-out organisation. Throughout this guidance we refer principally to a contract but much of our guidance also applies to a grant agreement. The distinction is examined further in section 2.5 on the EU procurement rules.

The five main types of organisation that are likely to be considered and their key features are shown below, along with what they might be used for, using the generic terms described in section 1.2.

Type of organisation	Key features	Can be used for
Local authority trading company ("LATC")	- Regulated by Companies House. - Contract can be awarded without advertising in OJEU in accordance with EU procurement regulations if the company: - Is wholly owned and controlled by the authority (or with other public bodies). - Provides the majority (over 80%) of its services to its owning authority or bodies. (This is often described as the Teckal exemption.) - Cannot gain charitable status.	- Local Authority Trading Company - Social Enterprise

Type of organisation	Key features	Can be used for
Registered Society (used to be known as 'Industrial and Provident Society')	• Registered and regulated by the Financial Conduct Authority. If charitable, also registed with HMRC for tax benefits. • Shares can be held by staff and/or community. • Can be charitable or non-charitable. • Contract will be subject to EU procurement regulations.	• Charitable Trust • Community Management • Mutual • Social Enterprise
Company limited by guarantee	• Regulated by Companies House. • Membership can be held by staff and/or community. • Can be charitable or non-charitable (if charitable, it will also be registered with and regulated by the Charity Commission). • Contract will be subject to EU procurement regulations.	• Charitable Trust • Community Management • Mutual • Social Enterprise
Community interest company	• Regulated by Companies House. • Can be established as limited by shares or limited by guarantee. If limited by shares, there is the opportunity to raise finance through equity. • Shares or membership can be held by staff and/or community. • Cannot be charitable but could act as the trading arm of a parent charity or have a charity as a subsidiary to maximise both commercial and charitable benefits. • Contract will be subject to EU procurement regulations.	• Community Management • Mutual • Social Enterprise
Charitable incorporated organisation	• Regulated by Charity Commission. • Charitable. • Contract will be subject to EU procurement regulations.	• Charitable Trust • Community Management

Making the right choice

The most significant choice of organisation is determined by the council's attitude to control, and the council's assessment of the benefits of charitable status. If the council wants to retain ownership of the organisation and charitable status is not a priority, then a local authority trading company would be the best route. Local

authorities have been increasingly using LATCs to "commercialise" services including for leisure, arts and culture projects.

If the council wants to maximise wider charitable benefits then it can choose one of the legal models which can be established as a charity. This would include a Registered Society, a Company Limited by Guarantee or a Charitable Incorporated Organisation. Although there are differences between these legal models, the precise choice is largely a matter of detail that will require specialist legal advice, as described in the advice on the spin-out process in Chapter 3. The most common of the charitable models is the Company Limited by Guarantee (for example Vision Redbridge), although there are a number of Registered Societies, for example Explore York (see case study). As a result of the Co-operative and Community Benefit Societies Act 2014, the term 'Registered Society' has replaced the term 'Industrial and Provident Society' for any new societies formed after August 2014.

The choice of model will depend upon the objectives of the authority. These objectives need to be clarified before any choice is made and the issues to consider are set out in Chapter 3: How to Spin Out. The choice of model is not an issue that needs to be finalised before the implementation phase.

The final choice of organisational model will have less impact on the ultimate success of the spin-out than the way that the spin-out is established; the soundness of its business model; and its leadership and management. Of course, the lure of possible financial savings derived from charitable benefits is often a significant incentive for elected Members faced with unprecedented financial pressures.

Further reading

- Winckworth Sherwood (2010) Trusts for Big Society – *a very readable summary of the options for creating charitable trusts, describing each option in greater detail on pps 12-13. Note: some of the regulatory arrangements have changed since its publication in 2010 – a new edition of this guidance is due to be published in 2015.*

- Financial Conduct Authority (2014) Co-operative and Community Benefit Societies Act 2014 - *a short online briefing note summarising 'registered societies', which is the term that has replaced 'industrial and provident societies' for new societies formed after August 2014.*

- Bohl, E. (2012) When the Salami's Gone - *a case study on Norse, the largest local authority trading company is provided on page 95.*

- The Department for Business Innovation and Skills (2011) A Guide to Mutual Ownership Models - *provides a short summary of the options for a mutual.*

2.4 The potential benefits

Overview

In deciding whether to pursue a spin-out, authorities need to assess the potential advantages and understand the implications. In this section we briefly review:

- The arguments advanced for encouraging spin-outs.
- The benefits of charitable status.
- The implications of independence.

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Arguments for spinning out

There are a number of arguments advanced for spinning services out:

- **Speed of response**: it is often argued that local authorities, like any larger organisations, develop layers of bureaucracy that slow down decision-making. It is claimed that smaller, independent spin-outs are able to respond faster to opportunities.
- **Community focus**: it is suggested that the more concentrated focus of a spin-out will improve its engagement with customers and the wider community.
- **Ability to innovate**: a large organisation's bureaucracy is also argued to provide a brake on creative and innovative thinking.
- **Accessing new skills**: the recruitment of trustees and non-executive directors to spin-out boards is often treated as an opportunity to draw on a wider reservoir of talent, experience and insights.
- **Motivation**: organisations which are owned by their employees, the community and/or users are claimed to benefit from higher levels of commitment and productivity.
- **Freedom to compete**: while local authorities have many new freedoms to trade for work, there are still restrictions that do not apply to some types of spin-out.
- **Freedom to employ**: while transferred staff will retain their local government terms and conditions under TUPE, including access to the local government pension scheme, an independent organisation may choose to employ new starters on different terms and conditions and pension arrangements.

Spinning out will not, on its own, guarantee that these advantages will be realised and the evidence for these claims is often thin. For example, it is all too easy for a new organisation to bring with it old bureaucratic constraints and inflexibilities - or even to create new ones! An authority will need to ensure that the way it spins out a service maximises the chance of these benefits being achieved. For example, speed of decision-making and innovation are less likely to emerge if the contract ties down every aspect of the service's operations.

Why go for charitable status?

There are a number of motivations for setting up an organisation that has charitable status:

- **Fiscal advantages**: charities benefit from business rate relief and, if the properties occupied have high rateable values, this offers a significant benefit. Charities do not pay corporation tax on their profits (unlike a local authority trading company).
- **Fundraising potential**: charities are "tax attractive" and, therefore, can attract new sources of funding from individuals and corporates as well as other charities and through legacies.
- **Public support:** it is often argued that the community is more likely to become involved in, or volunteer for, a charity and that the public is more likely to support a charity than, say, an outsourcing company.

However, these issues are not entirely straightforward and need to be examined carefully and critically.

Charities are eligible for mandatory rate relief of 80% and the authority can award discretionary rate relief of a further 20%. In the past, this saving was a significant advantage to a local authority as the vast majority of the cost of giving this relief was borne nationally (not locally). However, since the localisation of business rates, the cost is now shared between local authorities and central government and so the immediate overall benefit to the council is now lower.

The treatment of VAT is more complex and, while there are some beneficial exemptions for voluntary bodies (which might include charities), there are also some disadvantages that need to be planned for. For example, responsibility for building works might best be retained by the local authority because of the VAT implications. This is a complex area and specialist advice should be taken.

Philanthropic donations are more likely to be made to registered charities, although some individual donors and corporate sponsors have been willing to donate to local authorities, whether directly or through development trusts, often for specific capital projects, and may be wary of giving funds to a new spin-out without a track record. But the fundraising market varies widely across the country and must be researched and analysed as part of the spin-out process. Some funding bodies can be inflexible about the type of body they are prepared to give grants to.

Charities often depend on volunteers to deliver their services and their volunteers are often committed and knowledgeable. However, some local authority services (including archive services) have invested in supporting and encouraging volunteers with the result that a significant proportion of working hours are covered by volunteers.

The implications of independence

Most types of spin-out will be independent organisations and their directors (and, as applicable, their trustees) must owe their first duty to their organisation, not to the council. If charitable status is being sought, the Charity Commission will be particularly keen to satisfy itself that the spin-out is genuinely independent and is not being controlled by the council. Indeed, the Charity Commission has rejected some applications for charitable status because it was not satisfied on this point.

The one slight exception to the need for independence is a local authority trading company which, to satisfy the requirements of the Teckal exemption, must be managed as if it were an internal department of the council. However, even then, the directors of the trading company will be bound to act in the interests of the company. It is unlikely that a Teckal company will be accepted by the Charity Commission as charitable.

Authorities are often concerned that independence will result in a loss of control. A spin-out is, however, still subject to a number of controls and regulation. It will enter into a contract or legal agreement to deliver the services required by the council and that contract will impose a number of constraints. In addition, companies are regulated by Companies House and charities are regulated by the Charities Commission or HMRC. Indeed, some aspects of that regulatory framework can be testing.

Further reading

- Matrix Evidence (2010) The employee ownership effect: a review of the evidence - *provides a summary of the reported benefits starting on page 4.*

- Lampel, Bhalla and Jha (2010) Model Growth - *offers findings on the performance of employee-owned businesses on page 9 onwards.*

- Winckworth Sherwood (2010) Trusts for Big Society – *sets out the pros and cons of choosing the trust route on page 8 onwards.*

2.5 The risks and the challenges

Overview

While there are a number of claims for the benefits of spinning services out, there are also uncertainties and risks that need to be addressed. In this section, we review:

- The risks and arguments made against spin-outs.
- The need to understand the European Union's (EU) procurement rules.
- The need to take other legislation into account – and take legal advice throughout the process.

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The risks associated with spin-outs

The evidence for the advantages and disadvantages of spinning out is of variable quality, partly due to difficulties in measuring the effects and pinpointing the determinants. This is an area in which more research is emerging.

While a number of arguments have been made for the benefits of spinning out, there are also reasons advanced against spinning out - or, at least, for exercising caution:

- **Loss of democratic control**: while under direct management, elected members are able to hold service management directly to account and to ensure that policy changes are adopted and implemented rapidly.
- **Potential for failure**: a small, new organisation may struggle to be viable or to develop the disciplines needed to be sustainable.
- **Savings are often at the expense of staff**: while transferred staff will have a degree of protection through the TUPE regulations, many spin-outs make savings in staff costs by employing new starters on lower rates and offering less generous pensions.
- **No protection from cuts**: independence and a contract provide only limited protections from the demands for savings as contracts do make allowances for variation and the spin-out might find it hard to achieve existing savings targets, let alone take on new ones.
- **Few opportunities for growth**: while some spin-outs have grown considerably, these are the exceptions and many smaller spin-outs can struggle to develop the commercial skills and capacity to win new work, particularly if there are more and more spin-outs to compete with.
- **Fundraising can prove difficult**: donors and the public may be loath to give money to a service they still identify as a council service and believe they are already funding through taxation.

Some of these issues are matters of policy on which a spin-out will need to form its own judgement, for example the terms and conditions of new starters. Others are issues that authorities have found ways to address. For example, elected members

are often involved in contract governance and most councils ensure that providers are contractually bound to participate in scrutiny committee meetings.

A number of the other cautionary notes are risks that need to be mitigated. When setting up a spin-out, an authority needs to make sure that the business case, business plans and financial plans are thorough, realistic and designed to ensure that the spin-out is able to thrive and not set up to fail. We examine how this can be addressed in Chapter 3.

Understanding the EU procurement rules - overview

The EU's procurement rules apply to the procurement of all local authority services above a certain value and councils must understand these rules when making decisions on creating a spin-out. However, there are choices to be made and so it is important that the main options are understood. For the avoidance of doubt, the EU procurement rules form part of UK legislation. Therefore, they will continue to apply post Brexit unless and until changed by primary legislation. Whilst it is anticipated there will be no immediate changes to the legislation, a future government may introduce some flexibility in relation to spinning out certain leisure, arts and cultural services which up until 2015 were exempt from advertising in OJEU and hence inviting competition. Post Brexit (subject to the terms of the future relationship with the EU), there may not be a requirement to advertise in OJEU but there will be an obligation to advertise on a UK national portal which might, therefore, result in competition.

A new EU procurement directive came into force in 2014 and was transposed into law by the UK Government through The Public Contracts Regulations 2015 which came into effect in February 2015[1]. These new regulations introduce some significant changes that impact on, and help to clarify, the spin-out process. There are three regulations that are particularly relevant:

Regulations	Heading	What this covers
12	Public contracts between entities within the public sector	This would apply to the creation of a spin-out local authority trading company.
74-76	Award of contracts for social and other specific services	The 'new simplified procedure' which covers cultural services, including archives, libraries and museums.
77	Reserved contracts for certain services	The ability of an authority to decide to award a three-year contract to a 'qualifying

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[1] The regulations most relevant to this guidance apply in England, Wales and Northern Ireland. The Scottish Government will be introducing its own regulations to transpose the EU directive into Scottish law.

Regulations	Heading	What this covers
		organisation' such as a mutual or social enterprise.

We will look at each of these regulations in turn before examining some other alternatives that authorities may want to consider.

The standard procurement regulations that would apply

Regulation 12 has introduced rather minor changes, but ones which clarify the rules governing local authority trading companies. As summarised in section 2.3, councils are able to award contracts to a trading company to provide services without a procurement exercise if that company is wholly owned by the authority (or with or by other public bodies); and controlled in the same way as an internal department; and if most of its work is provided to its owning authority (or owning authorities, if jointly owned).

Regulation 12 clarifies that for this exemption to apply, 80% or more of its work must be provided to its owning authority or authorities. Previously, no precise figure was included in the directive and so case law was relied on to decide the level of the threshold for the exemption. This clarification provides much greater certainty and will make this a more attractive option, particularly if one or more authorities want to share in the creation of a new local authority company that they would like to see grow, either to expand to include new owning authorities; or to engage in trading and competing for new work; or both.

The prime advantage of a local authority trading company is that it can be established without advertising and hence inviting competition. It can also expand and diversify by tendering to provide services for other public, private and/or voluntary sector bodies (subject to a maximum of 20%). This will help with the sustainability of the local authority trading company. It should be remembered, however, that employees and the community could not participate in the ownership of such a body without it losing its procurement exemption and such a body would not be eligible for charitable status.

Regulations 74-76 have been described as a 'light-touch regime' and could be used as one route to spin out an archive service to a new mutual, charitable trust or social enterprise.

In the past, the EU procurement rules contained a distinction between Part A services (such as IT) and part B services (such as culture). Part B services could follow a less complex procurement process. That distinction has now been ended, although Part B has, in effect, been replaced by a new 'new simplified regime'.

The key features of the light-touch regime are:

- It applies to cultural services such as archives, libraries and museums[2].
- It requires an advertisement for the contract in the Official Journal of the European Union (OJEU).
- It allows authorities a very flexible approach to the procurement process and to the award criteria.
- It must still comply with the Treaty principles of transparency and equal treatment.

This new regulation does provide a great deal of flexibility - if an authority wants to take advantage of that flexibility to create a simpler process, but the requirement for an advertisement does involve alerting other potential bidders. As a result, a fledgling spin-out could face a competitive challenge from other, more seasoned bidders.

Regulation 77 reflects a new feature within the EU directive which the UK Government negotiated to help encourage the development of public sector mutuals. The regulation provides a temporary shelter from full competition and allows a local authority to:

- Reserve a contract for services such as cultural services to 'qualifying organisations'.
- Award that contract without full and open competition for a period of three years.

The cultural services covered by the regulation include 'library, archives, museums and other cultural services' (the list also includes 'sporting services').

However, this will not allow an authority to simply award a contract to its preferred spin-out. Instead, it will allow the authority to limit the award of a contract to any 'qualifying organisation', ie one that fulfils all of the following conditions:

> *'(a) its objective is the pursuit of a public service mission linked to the delivery of services referred to [...];*
> *(b) profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations;*
> *(c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —*
> > *(i) based on employee ownership or participatory principles, or*
> > *(ii) require the active participation of employees, users or stakeholders; and*

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[2] Regulations 74-77 apply to a range of 'social and other specific services' which are listed in Schedule 3 of the Public Contracts Regulations 2015. This schedule shows the 'CPV' numbers which are the codes used in the EU's 'Common Procurement Vocabulary' for goods and services. These are listed in Commission Regulation (EC) No 213/2008. It should be noted that regulation 77 applies to a narrower list of services.

(d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.'

Source: The Public Contracts Regulations 2015

This new provision does offer a temporary shelter for organisations such as mutuals or charitable trusts, but it also means that a new spin-out may still have to compete with existing mutuals or charitable trusts to win its initial contract. This is because regulation 77:

- Requires an OJEU advertisement in line with regulation 75.
- Allows the restriction of the contract to a particular *type* of organisation, not to a particular, favoured organisation.

Assuming the new spin-out did win the contract through this process, it would also then need to compete to win the contract again within three years. In effect, because of tendering lead-in times, this means the spin-out would need to be ready to compete to win the contract again within *just two years from the date of winning the initial contract.* This will be particularly challenging for any new organisation which is likely to require a year or more to establish itself successfully.

Taking a measured approach to procurement

In the past and under the old procurement regime for 'Part B' services, a number of authorities chose to spin out services without a competitive procurement process for various reasons, such as the absence of a market for viable potential providers. In any event, the new regulations make it clear that, in most cases[3], an open advertisement of a contract opportunity will be necessary which may require a competitive process.

An authority that is keen to spin out an archive service (probably with other services) to a newly formed mutual or charitable trust will need to consider whether it is serious about supporting the spin-out to be given a fair chance to win the contract in any procurement process. If the spin-out does not have dedicated support in this process, it may be being set up to fail. If the procurement process is over-engineered or unrealistic, it could be expensive for the authority and place unnecessary burdens on both the authority and the spin-out team.

Rather than use the authority's full-blown standard procurement process, the authority should agree to adopt a more tailored and flexible approach to advertising the contract opportunity and conducting any competitive process that results. The Crown Commercial Service advises authorities to:

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[3] There are some exceptions in the regulations to the requirement for an open advertisement and the potential competition that might result. For example, Regulation 32 allows for the 'use of the negotiated procedure without prior publication' in certain restricted circumstances.

'take advantage of the various flexibilities where possible, to maximise the possible benefits from the lighter rules regime, such as reduced process burdens on procurers and suppliers. The key things are to be clear about what your process will involve, making sure the process ensures transparency and equal treatment of suppliers, and sticking to the process that you decide to run.'

Source: Crown Commercial Service 2015

Other alternatives to a procurement under the regulations

Numerous spin-outs of local authority services have taken an approach that is different from the standard procurement process under the public procurement regulations.

There are opportunities to enter into arrangements with a spin out that do not trigger a procurement exercise. This would include:

- Granting a lease. A lease is a property transaction and outside EU procurement. Whilst potentially not as prescriptive as a contract, a lease can contain key restrictions to protect a Council's assets and services including, for example, restrictions on use, minimum open hours, repair and maintenance, assignment and subcontracting. It can also include monitoring and review arrangements.
- Entering into a Grant Agreement. A grant is not a contract for services and is outside the EU procurement regime. Again, whilst potentially not as prescriptive as a contract, a grant will nevertheless include detailed provisions relating to the use of the grant, required outcomes, monitoring and review and termination in certain circumstances. A potential disadvantage of a grant is that services operated under a grant cannot recover VAT in the same way and this could, in some instances, offset many of the other possible financial benefits, such as savings in business rates.

Great care needs to be taken in selecting the preferred approach to spinning out the service and specialist legal advice should be taken to ensure that the risks are properly understood and addressed. The risks include a private or third sector organisation lodging a challenge to the process being followed; even if unsuccessful, such a challenge could introduce delays and additional costs.

Complying with legal requirements

Of course, the EU procurement directive is not the only legal framework that influences a spin-out process. Other legislation that will need to be considered includes:
- The Public Services (Social Value) Act 2012 which places a duty on authorities to consider social value in certain contracts.
- Local Authorities (Goods and Services) Act 1970 and the Local Government Act 2003 which cover local authorities' trading powers.
- Best Value Statutory Guidance 2011 which sets out how authorities should comply with their Best Value Duty and includes wide-ranging requirements to consult locally throughout the commissioning cycle.

These represent just part of the legislative framework that will need to be considered and **legal advice must be taken throughout the process of considering the potential for a spin-out.** This does not mean that the spin-out process will be dominated by legal considerations. While the law must be understood and legal support will be needed at various stages of the project, the key decisions are matters of public policy and business management.

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Further reading

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- European Commission (2014) Public procurement reform - *details and factsheets on the new EU directive.*

- European Commission (2014) Factsheet No. 5: Public-Public Cooperation – *a summary of the new rules on Teckal companies.*

- Crown Commercial Service (2015) Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts – *this provides and advice on Regulations 74 to 77 of the new Public Contracts Regulations 2015.*

- Social Enterprise UK (2012) The Social Value Guide – *provides a summary of the Public Services (Social Value) Act 2012 and other legislation that needs to be taken into account on pps 5 to 17.*

- Department for Communities and Local Government (2011) Best Value Statutory Guidance.

Case study 2: taking control of your destiny

Organisation

Explore York is an Industrial & Provident Society and has charitable status. Within the mutual, one third of votes are held by staff and two-thirds by the community. It went 'live' on 1 May 2014.

Summary

City of York Council became an early member of the Cooperative Councils movement following a change of political control in 2011. The library and archive service staff had already been challenged at their annual staff conference by the new chief executive to think about how it could deliver its service differently. She had already used the archive service to research the history of local government so had a positive view of its benefits.

Scope

Explore York includes libraries, archives and local studies. The organisation has 67 staff (full time equivalent) and turnover in Year 1 is projected at £2.63 million.

What's unique?

Explore York is the first staff-led mutual library and archive service in the country to be spun-out from a local authority.

Results

The Mutual went live on 1 May 2014. It is operating under a five year contract, and is required to make savings of £200,000 over two years.

Concurrent with the spin-out process York has been delivering a major capital redevelopment of its flagship building funded by the Heritage Lottery Fund. As a spin-out Explore York has more flexibility to deal with a minor delay to the re-opening through negotiation with the council and the contractors. Victoria Hoyle (City Archivist) says 'Already being a separate organisation enables you to be more creative.' The flagship building opened on 5th January 2015 and the Archive had already received 22,000 visitors within its first three months.

Key learning point

Victoria Hoyle (City Archivist) says 'You're setting up a business and the numbers have got to add up. You can't see the business plan as 'another of these documents we have to prepare' in order to spin out, or write it and put it away in a cupboard. It needs to be under continuous review, as the assumptions will change.'

For further information

https://www.exploreyork.org.uk

https://www.gov.uk/government/news/first-staff-led-mutual-library-receives-100-000-backing

Chapter 3 - How to spin out

3.1 Summary of the key phases in the spin-out process

Overview

Deciding to set up a spin-out and then implementing it demand careful assessment. Borrowing from the language of commissioning, this involves analysis, planning, 'doing' (ie implementing) and reviewing. We have used this shorthand to summarise each phase. This short section provides an overview of the spin-out process. Subsequent sections look in greater detail at each phase.

It should be stressed that this process is a generic one that would apply to any services being spun out. The specific issues for an archive service are set out in Chapter 4, but can only be understood in the context of this wider commissioning process.

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Taking an overview of the overall process

Too often, organisations rush towards a solution without being entirely clear what it is that they are trying to achieve. The process of making a sound decision on whether a spin-out is the best option depends on research, assessment and planning. This process is reflected in the four stages of a standard commissioning process (see section 2.1 for a description of the commissioning cycle and further reading):

- **Phase 1: analysis** - setting a clear policy framework; and clarifying the drivers, needs and outcomes required.
- **Phase 2: planning** – confirming the service design; conducting an option appraisal; and establishing the business case.
- **Phase 3: doing** – planning and implementing the preferred model; and ensuring that the spin-out has been set up to succeed.
- **Phase 4: reviewing** – monitoring the performance of the new arrangements.

This process is complex and there are many strands that need to be managed effectively. Any council that is considering whether to spin-out a service must treat the exercise as a project; it needs to be properly planned and adequately resourced. Most councils will struggle to resource the specialist legal and financial skills required and will need to buy them in.

Once implemented, the performance of the services delivered by the spin-out will need to be kept under regular review and opportunities for improvement and further efficiencies explored together. Key issues to address in the review phase are summarised in chapter 5 on life in a spin-out.

3.2 Analysis: setting the policy framework

Overview

The analysis phase of the project will involve an assessment of duties, needs, assets, resources and the current performance of the service. It will also require an understanding of the ideas and expectations of users, staff and other stakeholders. Research will be undertaken into what other similar organisations are doing and what the market offers. This work will enable the definition of the long-term outcomes that will drive the project.

Commissioning is not just a sourcing or procurement process (see section 2.1); it begins by establishing clear policies that will govern the design of the service blueprint for the future and the choice of whether a spin-out is the best management model for delivering that blueprint.

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Key steps in the analyse phase

The process of deciding whether and how to pursue a spin-out model will need to be informed by a clear purpose. Clarity about the objectives of the exercise will help in the process of deciding on the right option and, if that option is a spin-out, the choice of spin-out model.

Clarifying the policy framework for the project could include researching and identifying:

- **Policy drivers**, ie the reasons why change is needed (for example the desire for greater community involvement or the need for savings).
- **Organisational objectives**, both the council's policies and objectives and those of the council's partner organisations.
- **Needs and assets**, ie legal duties, community, local or regional needs that have to be met, along with the existing local facilities or capacity that can help to meet those needs.
- **Assessment of the current services**, including their strengths and weaknesses and baselining data on services and budgets.
- **Assessment of the market**, understanding what other options or providers are available.
- **Outcomes**, the overall end results that need to be achieved.

If the archive service is within the scope of a project considering a wider range of services, care will be needed to ensure that the specific implications for the archive services are built into the policy-making process.

Establishing the policy framework

There are a number of general policy questions that will need to be considered for any range of services that might be in scope. Some of these may be matters of

political policy; others may be matters of judgement; and others will require careful analysis and validation.

Checklist of general policy issues to be considered

Policy issue	Key questions
Control	☐ Does the council feel that it must exercise direct control? ☐ Will a contract with the new body provide sufficient control? ☐ Would it want involvement in the management of the new organisation?
Autonomy	☐ Does the council believe that independence will allow a new organisation to be more effective than an in-house service? ☐ Is the council content that procurement might result in a different type of organisation winning the contract?
Community involvement	☐ Does the council believe there are benefits in giving the community some form of ownership in a new organisation? ☐ Are the community showing interest in taking over a new organisation?
Employee involvement	☐ Does the council believe there are benefits in giving staff some form of ownership in a new organisation? ☐ Are staff showing interest in taking over a new organisation?
Financial savings	☐ Does the council see a benefit in the new organisation being able to sell its services? ☐ Does the council see significant potential for external income generation? ☐ Does the council believe the new organisation will explore changing terms and conditions for new staff?
Charitable status	☐ Are tax savings or other charitable reliefs being sought, even if small? ☐ Is it believed that a charity will find it easier to fundraise? ☐ Does the council believe the objectives of a charitable body are better aligned with public service values?
Strategic withdrawal	☐ Is this service a statutory duty and what does that duty require as a minimum? ☐ Does the council believe that it no longer has a role in delivering aspects of this service? ☐ Does the council want to cease or run down its spending on this service?

It is the answers to these questions that will help to decide whether an authority will decide to spin-out a service. Some are straightforward. If a council is firmly committed to retaining direct control of all services, a spin-out is unlikely (however, the community right to challenge may force a council to consider this option). Others are more complex - if the council would like both to retain control and secure savings from charitable status, this will not be possible as the Charity Commission requires charities to be independent.

The issues set out in the checklist above are generic issues. For an archive service, there are also a number of specific policy issues that will need to be taken into account. These are considered further in Chapter 4 and include:

- The extent of synergies with other services.
- How to make the most of the archive service's assets.
- The ownership of collections and assets.
- The interests of funders and depositors – and the council's obligations to them.
- The statutory duties relating to elements of the archive service.

Further reading

- Compact Voice (2013) Understanding Commissioning and Procurement – *exploring the commissioning cycle on page 6.*

3.3 Planning: designing the future and option appraisal

Overview

Once the project is clear about the nature of the service needed in future, it is able to form a view of which service delivery model (whether make, buy, share or divest; see section 2.2) is best able to deliver it. The option appraisal process enables the council to make a considered judgement on the right approach for the future, allowing a review of all the many choices on offer; an assessment of the evidence for and against each of the choices; and a choice to be made based on a transparent comparison.

However, the process of conducting an option appraisal will need to be carefully designed. In this section we examine three key steps:

- Deciding on the scope of the appraisal.
- Defining the appraisal process.
- Setting the evaluation criteria.

We also provide a checklist of issues to test in the option appraisal.

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Desiging the future

In the second phase of the commissioning cycle, the planning phase, there are further questions an organisation will need to address before making a decision on whether to proceed with a spin-out. These include:

- **Conducting a gap analysis**: given the outcomes that are being sought, how effective is the existing service make-up at meeting them? Are there other assets in the locality (whether people or other public or voluntary sector services) that are helping - or could help - to meet those outcomes?
- **Service design**: before deciding how or who could deliver a service, just how could the archive service (and its partner services) be organised differently? Is the archive service operating in the most effective way, for example are the opening hours, location, publicity and income generation likely to meet the outcomes required?
- **Stakeholder engagement**: what do users think about the service and what would they like in future; what would encourage non-users to take advantage of the service; and what are the ideas of staff?

This process enables the development of an initial blueprint (sometimes called a target operating model or a detailed vision) of the way the service will be delivered in the future. This is the stage that is most likely to result in innovations in the council's ideas about what the service could and should be, given the resources available. Engaging stakeholders at an early stage (indeed, this should start during the 'analysis' phase) gives the opportunity to design the service around the needs of users and to generate new ideas and insights.

The analysis phase enables the project to be clear about the 'why' (the drivers, needs and assets) and the 'what' (the outcomes). The planning phase enables the project to define the 'how' (the service blueprint). It is at this stage that the project is able to consider the 'who', ie which type of organisation is best able to deliver the service blueprint in order to achieve the outcomes required.

In this guidance, we have focused particularly on conducting an option appraisal (see this section); developing a business case that will inform the final decision by the council on how to proceed (see section 3.4); and then identifying the financial issues (see section 3.5).

Being clear about the scope of the appraisal

First, the council will need to decide on the **scope of the appraisal**. Most option appraisals that will involve a decision on whether to spin-out a service or not will also evaluate other potential 'alternative service delivery models'. This phrase has tended to be used to describe the alternatives to in-house delivery, for example shared services, outsourcing and spin-outs. However, this can lead to confusion as these are management models, not service delivery models.

Indeed, when preparing to undertake an option appraisal, it is important that this distinction is understood: is a new approach to the nature of the service being considered; a change in its management control; or both? As a result, two forms of option appraisal may be required:

- Appraisal of the **service design**: assessing different ways in which a service could be designed. This could involve testing whether an archive service might be better integrated with a library service or a museum; or whether a more extensive digital service should be offered.
- Appraisal of the **management control**: assessing which type of organisation is best placed to manage the service. Would outsourcing to the private sector be an option; sharing the service; or creating a spin-out?

If no significant changes to the service design are being planned, the option appraisal might just be an appraisal of the management model. If a change to the service design is envisaged; both appraisals may be required. In that case, it would be ideal, for the sake of simplicity, if they were undertaken in sequence. In reality, the two appraisals may need to be iterative or integrated. For example, there could be service design issues over whether the service is best integrated with those of another organisation. There could also be an argument for evaluating the archive service separately or as a package with other services.

Defining the appraisal process

Second, the appraisal **process** will need to be established. Who will be involved in the option appraisal: will Members be asked to endorse the evaluation criteria; will the public be involved or other stakeholders; what level of evidence will be acceptable; and who will conduct the appraisal?

Setting the evaluation criteria

Third, a set of **evaluation criteria** will need to be established with which to assess each of the options. The evaluation criteria could be formed from the following ingredients:

- The outcomes set during the research and analysis phase of the project.
- The policy framework (see section 3.2).
- The financial objectives (these are already likely to be built into the outcomes and policy framework).
- The potential impacts and risks associated with each option.

The criteria will then need to be weighted, reflecting the council's priorities.

Once all three steps are in place, the option appraisal can be undertaken. This will require:

- Long-listing and short-listing the options. In the work of the project on market analysis and service design, the principal options will have emerged.
- Clarifying the assumptions used to support the evaluation of each option.
- Confirming the preferred option. It is possible that one option emerges as the preferred solution, although other options or permutations may need to be considered and researched further before a final choice is made.

Key to an effective decision-making process is making sure that the assumptions in the cost-benefit analysis are realistic. The assumptions for and against each option need to be tested and validated. Any one assumption that is overly optimistic or pessimistic could skew the appraisal unfairly, with lasting consequences. A checklist of issues to consider in the option appraisal is set out below.

Checklist of areas to test in option appraisal

1. Opportunities for innovation: have other options for the design and integration of the services been properly explored? Or has the service simply been packaged with other services because that's the current structure of the organisation?
2. Critical mass: do the new services have the right level of scale to be contracted for and managed by a new spin-out?
3. The potential for income generation: how realistic are the estimates; have similar levels been achieved elsewhere; what investment is needed to make it possible; and what resources and skills are needed?
4. The cost of procurement and contracting: have the costs been included of preparing for any procurement process and seeing it through to conclusion and finalising the contracts?
5. Overall project costs: does the council have the in-house skills and resources needed, and if not, have external costs, including consultancy and legal support, been included?
6. The potential for staff savings: has the possibility of a new organisation employing staff on different terms and conditions taken into account TUPE,

staff turnover and labour market conditions (and how they may change in the medium to long term)?

7. Savings in overheads: has the financial impact on the council's support service costs been properly assessed, including both the potential for savings and the loss of economies of scale for the council?

8. Set-up costs: for the spin-out option, have the ongoing revenue costs of new overheads been considered and the support needed to the spin-out to help establish itself and represent its own interests?

9. Governance costs: has the cost of managing a contract been taken into account; is the client side proportionate; and has the opportunity been examined for integrating it into other roles or sharing it?

10. Efficiency assumptions: have efficiencies factored into the in-house option been examined to see if other models could achieve them (and vice versa)?

11. Opportunity costs: have the projections for future savings been costed to take a realistic account of the time required to set up new management models?

12. Policy constraints: have the assumptions about the political acceptability of different options been properly tested with politicians?

13. Costs of optimism: have the costs and benefits of each option been properly challenged? Has enthusiasm for one of the models led to bias influencing the assumptions behind the others?

14. Assessing impact: are any of the options likely to have a particularly adverse impact on members of the community and can these be mitigated?

The temptation is to try to achieve a level of detail in the option appraisals that is definitive, anticipating every eventuality and predicting future costs and benefits with complete certainty. This is, of course, an unrealistic expectation. Instead, an option appraisal requires balanced judgements based on reasonable assumptions. However, this does not mean that a project is ready to proceed following the option appraisal - all the assumptions need to be refined and tested further and captured in a realistic business case.

Further reading

- Nesta (2010) The Open Book of Social Innovation – *offers innovative ways of involving people in rethinking service design from pps 30-49.*

- York Explore Centre and City of York Council (2013) Cabinet Paper - A Community Benefit Society for Libraries and Archives - *see the Option Appraisal section under Section 21 on page 6.*

- Boston Borough Council (2008) Boston leisure trust options report 2008 - *a case study legal report demonstrating a leisure trust's options appraisal, including the list of options available to the trust (pps 5-9) and the recommended management approach (page 9). A good example of the evaluation process, although there have been changes to the law since 2008.*

- Bohl, E. (2012) When the Salami's Gone- *includes a checklist of questions on page 94 that can help in deciding the potential scope for trading and winning new work.*

3.4 Planning: the business case

Overview

Once the option appraisal has been undertaken, the business case can begin to be prepared. The business case is a formal document that is used to confirm whether a project is worth pursuing.

In this section, we summarise:

- The main components of a business case.
- The difference between a business case and a business plan.

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What is a business case?

Generally, an outline business case will be developed following the option appraisal, setting out the costs and benefits of the preferred option and the assumptions behind them. These will then be researched and tested further until a full business case can be developed which will enable the council to make its final decision on whether to proceed. The level of detail involved will vary depending on the council's resources and on the complexity and potential financial impact of the project. Many councils have their own preferred approach and templates for business cases, but it is helpful to bear in mind the Treasury's 'five case model':

> _'The business case in support of a new policy, new strategy, new programme or new project must evidence:_
>
> o _That the intervention is supported by a compelling case for change that provides a holistic fit with other parts of the organisation and public sector– the 'strategic case';_
> o _That the intervention represents best public value – the 'economic case';_
> o _That the proposed deal is attractive to the market place, can be procured and is commercially viable – the 'commercial case';_
> o _That the proposed spend is affordable – the 'financial case';_
> o _That what is required from all parties is achievable – 'the management case'.'_
>
> _Source: HM Treasury (2013)[4]._

If the project has been delivered effectively so far, much of the evidence and material needed to develop the business case will already have been created or will be in the process of being developed (even if they have been called different things). The strategic case will have been developed through the research and analysis phase and through the development of the service blueprint. The economic and financial

[4] Some minor grammatical inconsistences in the original text have been corrected.

cases will have been started as part of the cost-benefit analysis in the option appraisal. The choice of management model will inform the commercial case. Although an outline timetable would have been developed as part of the option appraisal process, a more detailed implementation plan will be needed to form the management case.

If the council has chosen a spin-out as its preferred management model, there will be a number of particular issues that will need to be addressed in developing the business case and the implementation plan. Some of these are generic issues (see sections 3.5 and 3.6) and some are specific to an archive service (see Chapter 4).

A business case is not a business plan

The business case will help the council to decide whether or not to proceed to create a spin-out. It will include a set of financial assumptions. The business case is an evaluation tool. It is not the same as the business plan for the new spin-out.

The new spin-out will need to develop its own business plan and financial plan. These may draw on the work done to create the business case, but the new spin-out and its board and directors will need to satisfy themselves that they are realistic and viable. The business plan and its supporting financial plan will require further detailed planning and careful validation before they are ready for adoption (see chapter 5 for pointers on business planning).

Further reading

- HM Treasury (2018) The Green Book - Central Government Guidance on Appraisal and Evaluation - *for an overview of the Treasury's 'five case' business case, read Chapter 3 on page 10.*

3.5 Planning: the finances

Overview

In section 3.4, we reviewed what makes up the business case that will enable an authority to decide whether to proceed with a spin-out. In this section we review some key financial issues that will need to be considered carefully as, unless it is set up correctly, a spin-out might not deliver the savings hoped for. Some of these are broader issues that relate to the economic case, ie the overall cost/benefit analysis. Some are more basic issues that inform the financial case: can the authority fund the project and do the expected savings match the authority's financial plans? In this section we review:

- A checklist of financial planning issues to consider.
- The need to carefully validate the financial assumptions.

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Working through the financial issues

In many instances, authorities will have undertaken similar projects and will be able to draw on that experience. In other cases, there may be little experience or capacity to support such financial planning and external help may be required.

For most of aspects of financial planning, there will be both savings and additional costs to take into account and the key issues are set out in the table below.

Checklist: key issues to address in financial planning

Topic	Issues to address
Cost of change	☐ Project and resource costs on the client side. ☐ Project and resource costs on the spin-out side. ☐ Costs incurred by third parties.
Fundraising	☐ Assumptions of charitable giving. ☐ Cost of capacity to fundraise. ☐ Maturity of local market for charitable giving.
Commercial	☐ Increased income from greater commercialism. ☐ Costs of investment and ongoing resources needed to support commercial income. ☐ Costs of establishing any trading subsidiary.
Efficiency	☐ Savings from tighter direct control of procurement. ☐ Potential disbenefits of loss of economies of scale.

Topic	Issues to address
Taxation	☐ Business rates savings if charitable status secured. ☐ VAT implications, depending on approach taken.
Overheads	☐ Savings in council's corporate costs. ☐ Costs of new overheads for new organisation.
Staffing	☐ Implications of terms and conditions offered to new starters in spin-out. ☐ Assumptions about productivity improvements. ☐ Accounting treatment for council of pensions transfer.
Financial prognosis	☐ The authority's medium term financial strategy. ☐ Scenarios for long-term funding landscape.

Validating the financial assumptions

Spin-out projects require considerable planning and technical, legal and financial advice. The client side will need advice for the procurement process and for drawing up contracts and other legal agreements. The spin-out will need to form a new corporate entity and make its own preparations for its side of the contracts and agreements. Overall project management and project support will be needed. Some authorities also account for all the staffing resources associated with a project, including costing the time of managers and staff involved in the process.

Most financial plans make assumptions about the financial benefits that would be expected to flow from an improved ability to fundraise (including charitable giving) and to act in a more commercial, entrepreneurial way. However, these assumptions must be grounded in realistic plans, also taking account of the need for staff capacity (and other resources, for example spending on marketing) to be able to generate such income.

Financial plans will often incorporate assumptions of savings that would flow from a greater focus on cost control of supplies and services and the ability to control directly their purchasing. However, this should be tested as the spin-out will also need to resource the purchasing process and may suffer from the loss of the benefits of buying in bulk. One example of the additional costs that can arise is the cost of insurances. The cost to the spin-out of taking out its own insurance will tend to be higher than the saving made by the council as a result of the removal of the spin-out's services from its own insurance policies.

Savings in business rates (also called National Non-domestic Rates, or NNDR) will generally make a significant contribution to savings, providing that charitable status is secured. Until recently, this provided a more significant incentive to local authorities, since at least 80% of the cost of business rate relief for charities was

borne by the Treasury. Since the localisation of business rates, the cost of business rate relief is shared more equally between the council and the Treasury and so the local saving in the short to medium term is reduced, although often still valuable. However, business rates reforms proposed for 2020 may move the medium term cost back to Government. Specialist advice will be required on the treatment of VAT which can bring both benefits and disbenefits, depending on the service involved and the way in which the service is funded.

A substantial proportion of the total revenue budget of a service is likely to be made up of corporate costs and recharges (which might amount to a third of the service's costs). It is often assumed that the spin-out will be able to reduce these costs, resulting in a significant saving. This is too simplistic.

Some of these costs will not change as a result of a spin-out (for example the accounting treatment of depreciating the value of assets). Others should be capable of being reduced, such as the cost of HR, finance and IT, if the spin-out decides to make its own arrangements. In the medium to long term, a spin-out is likely to make its own arrangements for support services which may be cheaper as the support service needs of a small organisation will be much simpler compared with those of a unitary or county council.

However, the reduction in demand for support services resulting from a small service being spun out may be too small (on its own) for a corporate support service to generate savings. If it is likely that the council will make other changes that will reduce the demand for support services, then it is reasonable to try to build some savings in council support services into the business case.

While there may be savings in the council's corporate costs, the spin-out will have its own new overheads that will need to be factored in. The organisation's board of directors and/or trustees will have their own support needs and there will be a reporting overhead for company returns and accountability to the Charity Commission.

A significant factor for any business case is the approach that will be taken to employment issues. Existing staff will generally transfer to a new spin-out in line with TUPE regulations, ie with their existing terms and conditions and pension rights. Going forwards, a spin- out will have some flexibility over the terms and conditions of new starters. If this is anticipated in a business case and business plan, realistic assumptions will be needed on terms and conditions that will be sustainable and the levels of staff turnover (and on whether such differences will present equal pay problems in the long term).

There are some reports suggesting that there are significant productivity benefits for some types of spin-out (particularly if employee controlled). A judgement will be needed on whether the council and spin-out considers that there is sufficient relevant evidence to build this into a financial plan.

Finally, an actuarial assessment will be needed of the impact on the pension scheme of the transfer of staff to the spin-out organisation. In general, pension schemes have

a deficit and the new spin-out is unlikely to be willing to take over that historic liability. Therefore, the existing deficit will remain with the local authority.

Careful consideration needs to be goven to future pension risks, ie change to the employer contribution rate and accrued deficit at exit.

For all of these issues, the assumptions behind the costs and savings will need to be documented and recorded and in each case, consideration given to whether a sensitivity analysis will be required to test the effect of alternative scenarios. Will current patterns of demand be maintained; are there new developments (for example technological) that may influence demand?

In the end, it will need to be clear whether the council can afford the short-term cost of converting to a spin-out and whether the resulting costs are affordable - to avoid the new spin-out being set up to fail.

Taxation and spin-outs – a serious issue

When a local authority provides the archive service it does not have to pay a great deal of attention to taxation as it has a marginal impact on its affairs. Even the large amounts incurred on business rates are not a major concern as the costs are unavoidable.

In a spin-out all this changes: once outside the protective boundary of the public sector all aspects of taxation become features of potential importance to the embryonic new service and have to be actively considered and addressed.

What has been not been an issue in the past may be for the future spin-out. For example, a local authority archive service does not pay corporation tax or capital gains tax because it is not a business and does not trade. But can that be said for the new spin-out organisation and what it plans to do?

The question that arises in an archive service spin-out is whether the move to a new organisation changes the financial impact of taxation. This can be to the advantage or disadvantage of the proposed new organisation and can have a major influence on the selected route. These impacts will need to be addressed in the business case for the service in a spin-out and in the business plan. These impacts do not just affect the spin-out; consideration will also need to be given to the effect on the authority's finances, particularly if the spin-out will secure business rate relief. This guidance provides high level comments on corporation tax, capital gains and stamp duty land tax, together with more details considering business rates and value added tax which are typically matters of importance in spin-outs. However, you should **not** rely on this guidance alone. Specialist advice should be taken on the treatment of taxes, including VAT, business rates, stamp duty land tax and corporation tax.

Corporation tax, capital gains tax, stamp duty land tax and gift aid

The impact of taxation on the business case for spinning out will depend on what the authority is trying to achieve through the spin-out. Two examples of the implications are provided here.

First, spin-outs often are set up with the intention of taking an entrepreneurial approach and bidding to run services for other authorities in order to generate income. A charity can trade provided it is permitted trading. This would include charging for the charity's activities that are its primary purpose.

'Primary purpose trading' is tax exempt. However, any non-primary purpose trading (subject to de minimis thresholds) would need to be carried out by a trading subsidiary of the charity. In this case, that part of its trading activities would be subject to corporation tax on any trading profits (about 19% of its trading surplus) whereas the same activity if carried out directly by a council would not be - in this instance the corporation tax would represent an additional cost to build into the business case for that type of spin-out.

The trading subsidiary would, however, mitigate its liability to corporation tax by gifting all or part of its profits to the parent charity. The taxation affairs of the subsidiary needs to be reflected in the business case for the spin-out.

Second, spin-outs often intend to encourage charitable giving. If the spin-out is a charitable body, it will be able to secure gift aid tax recovery on the donations. If, say, a Friends Group were successful in raising £20,000 in donations, the spin-out might able to recover income tax on the donations, increasing income received by 25% through gift aid, i.e. an additional £5,000.

Similarly, if properties were transferred into the trading business they could be subject to corporation tax arising on any capital gains arising on any disposal of those assets. Typically, in order to avoid taxable capital gains in a spin-out, properties are transferred by way of short term leases with peppercorn rents – this avoids corporation tax and capital gains tax. However, exemptions may be needed to avoid stamp duty land tax on transfers. Again, specialist legal and taxation advice is essential.

Business rates

Typically, in an archive service linked with a library or museum spin-out or for that matter the spin-out of any leisure or cultural service which has a significant property portfolio, savings in business rates (also called National Non-Domestic Rates, or NNDR) are going to be a significant element of the identified savings.

Whilst it may appear to be an anomaly, local authorities have to charge themselves for business rates on all the properties they occupy. The same applies if the buildings are owned or rented. This includes the council's offices, schools, and depots as well as the buildings used by the archive service.

Rates bills are raised in respect of local authority property including archives, libraries and museums based on their rateable values in the same way as for non-local authority property. However, when property is transferred outside local government it may become eligible for rate reliefs. It is the eligibility and the securing of the benefit of those reliefs that gives rise to the savings that feature in most business cases for spin-outs.

The following reliefs might be relevant to a spin-out:

Type of relief	Details of relief[5]
Charitable Relief	Available mandatorily to ratepayers that are charities or trustees for a charity and responsible for property that is wholly or mainly used for charitable purposes (by the charity itself or other charities). Relief is granted at a rate of 80%.
Discretionary Relief[6]	Can be given by authorities to charities or trustees of a charity for the 20% of their bill that is not covered by the mandatory 80% relief. Discretionary relief up to 100% can also be awarded to properties occupied by various types of organisations that are not established or conducted for profit.

Before 1 April 2013, charitable relief had no impact on local authorities, who collected business rates wholly on behalf of central government. However, from that date, a system of 'local retention' has operated for rates income whereby the effects of increases and decreases in the rates income are shared proportionately between central government and local authorities. Consequently, where rates relief is given, part of the lost income is borne by the local authority and that needs to be taken account of in the business case for the spin-out.

Shares of rates income were based on baseline assessments for each authority that included allowances for charitable reliefs given in the past. However, baselines would only reflect new charitable reliefs when they were periodically reset (which has not happened to date). In the meantime, any decreases in rates income measured against the baseline will be borne partly by local authorities. After a reset, the burden of lost income would shift wholly back to central government.

This means that any authority spinning out a service must take into account the reduction in its share of rates income when the new organisation is given charitable relief. However, it will be difficult to predict the amount of lost income that will be borne by an authority over the period covered by the business case for the spin-out as major changes are planned to the rates retention arrangements for 2020/21 onwards, some of which are already being piloted by volunteer authorities.

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[5] The detail in this table is based on the circumstances as they applied at 1 April 2018 and might be subject to subsequent change.

[6] Billing authorities usually post their policies for discretionary relief on their website, setting out the criteria against which they will assess applications and the level of relief that might be granted. Even though the authority might be supporting the creation of the spin-out, it might find it difficult to award discretionary relief to the spin-out it has helped to create if that breaches its usual policies on discretionary relief.

The consultation documents issued by the Ministry for Housing, Communities and Local Government in January 2019 had two relevant proposals:

- increasing the share of gains and losses in rates income that would fall to local government from 50% to 75%
- introducing an annual process for resetting expected rates income

It is therefore possible that from 2020/21, the income lost to an authority as a result of new charitable relief will increase, but that this loss will only be incurred in the year that the relief is first given and might be removed in the next annual reset.

Anyone planning a spin-out should ensure that they talk to the authority's rating experts and consider taking advice on the potential financial impact for the spin-out organisation and the authority.

Gains and losses in respect of rate reliefs are rather complicated, but the way they are currently shared is set out in the table below. (These shares do not apply to authorities that are piloting arrangements for the 2020/21 changes, who will need to refer to their pilot agreement.)

Government layer	Authority types	Share of the cost of rate reliefs
Central government		50%
Two tier areas	County councils	10%[7]
	District councils	40%
Unitary	Authorities outside London	50%

Source: the Non-Domestic Rating (Rates Retention) Regulations 2013 (SI 2013 No 452 (as amended)).

For instance, if a spin-out in a county area that was not part of a pilot were granted charitable relief of £1,000, the lost income (the charitable relief) would be borne by central government (£500), the county council (£90), the district council (£400) and the fire authority (£10).

For the authority currently responsible for the rates bill, these costs will be more than compensated for by the savings arising from no longer having to pay the bill. However, the costs will be an absolute loss for the other authorities in the area.

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[7] 9% for two-tier county councils that do not have fire and rescue service responsibilities

It is important that this is clearly recognised as your authority's spin-out could cause problems for your local partners. To understand this better, we have illustrated this with some examples.

If the libraries and archive services currently owned by a county council and with a rates bill of £100,000 were transferred to a charitable trust the new trust will be asked to pay a rates bill of £20,000 (ignoring any discretionary relief granted) (£100,000 less the 80% mandatory relief (£80,000)).

Assuming this was a two-tier county area, the billing authorities (the district councils) will collect the reduced rates and now have £80,000 less proceeds to share with central government (50% of the £80,000 i.e. £40,000), district councils (40% of the £80,000 i.e. £32,000), the fire and rescue authority (1% of £80,000 i.e. £800) and the county council (9% of the £80,000 i.e. £7,200).

Effectively if the county council were meeting the rates bill both before and after the transfer it will have saved £72,800 but that gain will effectively be met by other public bodies in that area and by central government.

VAT

Local authorities have a more advantageous position than most public sector and private sector organisations as they normally recover all the VAT input[8] tax that they incur, unlike central government bodies that do not normally recover VAT. Businesses offset the input VAT they pay against the output VAT they charge and pay the excess over to HMRC (or recover any deficiency from HMRC).

As a local authority service, the archive service will incur more VAT than it can recover from the sales it makes. However, in a local authority this additional sum is recovered from the HMRC and is not a charge on its revenue account. In a spin-out, the arrangements need to be designed to achieve a similar VAT position. However, this can only be achieved with good planning.

The position for the spin-out will never be identical to the situation that existed before as the VAT advantages available to local authorities are imposed by statute and are not capable of being given to other entities. In addition, the VAT position for an entity that has been spun out could potentially be exacerbated because it might have additional input tax. For example, it may bear recharges for support costs from the authority which would be subject to VAT once the entity is separated.

The new spin-out entity will continue to incur some of those local authority costs unless it chooses to isolate itself from the local authority. The local authority will charge VAT on the recharges it makes which on current rates of VAT will add 20% to these costs, thus exacerbating the need of the new spin-out to secure the recovery of the VAT costs. Alternatively, the spin-out may commission that support from somewhere other than the authority and if it does these expenses are likely to be subject to VAT.

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[8] 'Input' VAT is the tax your organisation is charged when you buy goods and services. 'Output' VAT is the VAT you charge to others.

Further reading

- York Explore Centre and City of York Council (2013) Cabinet Paper - A Community Benefit Society for Libraries and Archives - *an overview of financial assumptions is included in Section 46 from p49 onwards.*

- Department for Communities and Local Government (2019) - Business rates relief – overview of discounts on business rates and business rates relief.

- Department for Communities and Local Government (2013) - Business rates retention – useful set of publications providing information and advice on business rates retention.

3.6 Doing: implementation

Overview

Once the planning phase is complete, the council can move on to the doing phase and begin the implementation process. If a council chooses a spin-out as its preferred model and the business case is positive, the plan for implementation will need to ensure that all the key steps in transition are planned for. Many of these will be client side activities. However, there will also be project activities that are specific to the spin-out. These will need to be managed by the spin-out team who will need to act in the interests of the spin-out and the new spin-out board or trustees will need to satisfy themselves that they are ready to take on the delivery of services.

In this section we:

- Provide a checklist of key activities needed to implement the spin-out.
- Examine the steps needed to make a success of the spin-out.
- Stress the importance of effective leadership and management.

In Chapter 3 of this guidance, we have focused on describing the generic issues that need to be addressed during planning for a spin-out. Archive specific issues are highlighted in Chapter 4.

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Detailed implementation planning

Following the analysis and planning phase, the detailed implementation plan will need to be finalised. This will include any procurement exercise that is needed. Any authority that has outsourced or shared a service will have experience of managing a transition process, but there are a number of key differences.

However, the setting up of the new organisation that is spun out of the council needs to be organised carefully. It will need to be structured effectively and will need a sound business plan and the right leadership and management practices. The spin-out will need to make its own decisions (as a separate organisation) about whether to take on the new contract or legal agreement and would benefit from havingits own, independent help to manage the negotiations over the details.

Good project management is essential if all the workstreams, risks and issues are to be co-ordinated effectively. This should not be managed on top of the day job by one of the service's managers. The workload is too great and the issues too complex to be managed with confidence by an inexperienced team. However, the bulk of the work on the project can be managed by a competent project management team. The key elements that need to be managed are set out in the checklist below. Each of them represents a substantial piece of work in its own right.

Checklist for transition to spin-out organisation

Responsibilities	Key activities
Project management	☐ Designing a comprehensive project plan. ☐ Managing the project to time and budget. ☐ Supporting project board and sponsor to provide assurance. ☐ Supporting key decision-making processes. ☐ Supporting Members' oversight and decision points. ☐ Preparation and review of the risk register.
Procurement (if required)	☐ Launching preliminary market enquiries. ☐ Considering procurement route. ☐ Identifying key priorities and weighting for the procurement exercise. ☐ Identifying key principles for the project documents. ☐ Drafting the project documents including the contract and, as applicable, draft form of lease. ☐ Confirming the length of the contract and any option to extend. ☐ Identifying any contract review points and break clauses.
Change management	☐ Undertaking an equalities impact assessment and assessing other impacts. ☐ Creating and managing a stakeholder engagement plan. ☐ Managing public and user communications. ☐ Staff engagement and communication.
Staff transfer	☐ Confirming staff in scope for transfer. ☐ Formal staff and trade union consultation. ☐ Establishing admission agreement to council pension scheme for spin-out. ☐ Creating and filling senior management structure for spin-out. ☐ Welcoming staff to new organisation and creating new identity. ☐ Effecting transfer of staff to spin-out. ☐ Confirming policy on terms and conditions for future new starters.
Spin-out set-up	☐ Establishing the new organisational entity and registering the organisation with the agreed objects. ☐ Establishing any trading subsidiaries required. ☐ Creating new governance and accountability framework. ☐ Recruiting and inducting trustees and/or executive board. ☐ Supporting shadow and new board to oversee development of new vision, mission and business plan.

Responsibilities	Key activities
	☐ Putting in place support services (which may initially be provided by council). ☐ Implementing new operating model. ☐ Establishing new financial entity and financial management disciplines (for example cash flow management).
Contracting	☐ Responding to any service specification with proposal of service offer. ☐ Developing financial plan to support pricing proposal. ☐ Negotiating / finalising draft contract and leases tailored to spin out's offer. ☐ Finalising draft contract and leases and arranging for signing.
Assets	☐ Identifying the general assets (for example premises) and their condition. ☐ Identifying the collections and their condition. ☐ Identifying other associated assets including equipment, contracts, databases. For each asset, agree ownership and terms of loans, transfer or licence.
Legal issues	☐ Drafting, negotiating and finalising project agreements (including leases). ☐ Negotiating transfer of other agreements (for example Funding and Management Agreements and depositors' agreements) to spin-out organisation. ☐ Arranging for transfer of licences (for example software). ☐ Notifying or negotiating with funders (particularly where grant conditions in place).

Most of the activities that need to be undertaken are generic and would apply to all the services being transferred to the spin-out. However, there are a number (for example the specification of the collections management policies and depositor agreements) where the detail relating to archives will need to be worked out. These are examined further in Chapter 4.

Making a success of the new spin-out

The process of preparing for a spin-out will necessarily involve managers and staff employed by the council who will subsequently transfer to the spin-out organisation. This will introduce the potential for conflicts of interest to emerge and these will need to be managed carefully. For example, there will need to be a clear separation of client and shadow spin-out teams if procurement is underway and appropriate ethical walls put in place. Also, during the process of finalising the contract and commercial

terms, the spin-out will require its own legal and financial advice that is acting independently of the council.

However, the change from a directly managed council service to a spin-out does involve some significant changes in the way the council engages with the service and in the way the spin-out is managed. In particular there are a number of conditions for success:

- Getting the scope of the contract and objectives of the spin-out right.
- Developing a productive relationship with the client.
- Effective leadership of the new organisation.
- Sound business and financial disciplines.
- Developing the ability to bid for and win work.
- Developing new skills and a new culture.

We examine each of these in turn.

Designing the contract and governance

The council may have decided that it is interested in the new organisation being able to take on more of the council's services if the spin-out proves to be a success. In this case, the procurement process and contract will need to allow for that possibility and the spin-out's charitable objects or company objectives should also be drafted with sufficient flexibility to allow such expansion.

The approach taken to contract management will have been developed during the implementation process and the overall approach will have formed part of the contract. Depending on the experience and confidence of the client, different approaches can be taken: a highly controlling input/output specification with few freedoms or, at the other end of the spectrum, an outcome-focused approach with greater flexibility for the spin-out. A spin-out organisation is likely to welcome a more flexible contract so that they can innovate and react more quickly to change and opportunity. What the council can no longer do is 'manage' directly the service that has been spun out.

Whichever approach is taken, there are likely to be layers of joint contract governance involving both the client and spin-out:

- Strategic: at a senior political and managerial level, periodically reviewing overall performance and developing longer-term joint plans.
- Operational: the senior client lead and spin-out lead will regularly review performance, risks and issues and monitor the delivery of joint plans.
- Tactical: the client manager and spin-out contract manager will liaise over day-to-day issues that arise and track performance.

While the tactical level can be less formal, it is important that the governance framework is maintained and does not slip into abeyance - or strays in the other direction towards an overly bureaucratic, fault-finding approach to client monitoring. The longer-term success of the spin-out and the contract will depend on there being a close but business-like relationship and a shared understanding of both partners'

priorities and objectives. Care will also need to be taken to ensure that the contract monitoring process supports the council's scrutiny processes.

The right leadership style and management practices

Spin-outs, like any organisation, depend on good leadership and management. Some research suggests that for employee-owned spin-outs, it is employees' sense of influence and control that has a more positive effect than the fact of ownership. A more collaborative, rather than top-down, leadership style may be more effective, encouraging staff to help shape the direction of the spin-out.

The right type of leadership will help, but sound management disciplines are still required, for example:

- New reporting and decision-making rules will need to be created that enable decisions to be taken at the right level.
- New schemes of delegation and operational procedures will be required that are proportionate to the size of the organisation but that still embed good practice and accountability.
- New financial management disciplines and reporting will be needed. In particular, managers will need to learn to manage a profit and loss account and learn about the critical importance of cash flow management.

Managers will need a new depth of understanding of their unit costs and the profitability of their activities. This is particularly important when the spin-out decides to bid for new work. It is even more important if the spin-out has secured an initial three-year contract and must be ready to compete with other providers to retain that contract. Its competitors are likely to have well-developed bid engines and the new spin-out will need to develop those skills rapidly. If the spin-out does want to pursue opportunities to expand, it will need to develop a disciplined approach to business development so that it can decide where to invest the resources needed to secure new work.

Finally, the spin-out will need to ensure that its vision and mission shapes the type of culture it wants to encourage and the skills of its managers and staff. Its employees will need to be equipped with a range of new skills and the right attitudes will be needed to ensure that those skills are able to be deployed effectively.

Case study 3: creating a trust with critical mass

Organisation

Culture Coventry manages the city's heritage and visitor attractions. The trust is a company limited by guarantee that is also a registered charity.

Summary

The Coventry Heritage and Arts Trust, established in 2005, merged in 2013 with the Transport Museum Trust, mainly to cut costs at the request of its main funder, Coventry City Council.

Scope

The enlarged trust, Culture Coventry, includes museums, archives and local studies to create a broader heritage offer. The trust has an SLA with the council guaranteeing funding for three years. A business plan is being developed which aims to safeguard against future funding cuts, by prioritising income generation.

What's unique?

The integrated service offer grew organically alongside the redevelopment of the Herbert Museum. The senior arts and heritage officer who project managed its redevelopment, had been the city archivist and his contribution to putting archives at the centre of the trust's offer was key.

Results

The merging of the two trusts has resulted in £400k savings for the council, mostly through voluntary redundancies. Visitor numbers are up and the new Trust is taking the opportunity to review services, capitalise on new ways of working and increase revenue.

Key learning point

David Bancroft, Culture Coventry's General Manager argues the importance of the backing of a benign host authority which recognises the financial difficulties and the need for survival. According to David: 'What we have to constantly ask ourselves is how can we give the customer a great experience for less money?'

For further information

For information on the project, please visit http://www.theherbert.org/whats-on/history-centre.

Chapter 4 - Spinning out archive services - the essentials

4.1 Influencing the packaging of the spin-out

Overview

In Chapter 3 ('How to spin-out') we addressed the generic concepts to be understood in each stage of developing a business case. Chapter 4 sets out the approach you need to take to influencing the design and operation of the spin-out to enable you to deliver your vision for the future of the archive, the needs of your users and the specific requirements of your collections. It proceeds through addressing the contractual and corporate issues you need to address, then looks at the challenges from the perspective of broader cultural services, before focusing finally on the specific issues for archive collections and services in the spin-out. It bears in mind that:

- Archive services are often low profile within an authority with less influence among senior officers and elected members than other services.
- The spin-out process therefore provides the opportunity to highlight the contribution of the archive service to corporate objectives, and shape the vision for the spin-out.

In this section we give an overview of the implications for archive services which need to be addressed at each stage of the business case to ensure the specific needs of the archive are built into the design of the spin-out.

Positioning the archive service throughout the business case

Influencing the packaging of the spin-out will require the archive service to have a clear understanding of its own contribution to the business case for the options under consideration, and what the implications of different decisions might be, depending on the level of ambition and potential of the service. You should be able to demonstrate the following before reaching the stage of finalising a business case:

Vision:

The service's mission and vision for the service need to be clearly articulated in the context of the strategic case for the spin-out. Importantly, their understanding needs to be shared across the council and its stakeholders. If your archive hasn't had the opportunity to engage stakeholders in planning its strategy, this is your chance to position the service for the future in a spin-out.

Objectives and Outcomes:

The service should identify SMART (Specific, Measurable, Achievable, Realistic, Timely) objectives and measurable outcomes, based on a local needs assessment.

Contribution to local priorities:

These need to align with the outcomes framework for the spin-out (see Section 3.2) and contribute to council and commissioner priorities, in the context of the authority's MTFS and the policy frameworks of other agencies.

Service design and integration:

Archives are configured alongside other services in different ways, whether with local history, records management, public libraries and heritage, or other customer-facing services. The options for their service design and integration in the spin-out need to be assessed.

Financial affordability:

Your archive service needs to be able to demonstrate that it has a sustainable financial future in the spin-out. You should be able to weather scenarios including adverse changes in the spin-out's funding model and reductions in core income, or be confident that generating other income from commercial activity or fundraising has an acceptable probability of success.

Check list of questions for archive services at each stage of a business case

Business case stage	Checklist of questions for archive services
Vision	• Is the vision for the archive one of expansion or maintaining the council's statutory duties for information and data, and to maintain its Archive Service Accreditation status and/or as a place of deposit?
Objectives and outcomes	• Can the service demonstrate a clear understanding of the market in which it operates? • Does the archive have credible performance measures which will evidence its impact?
Contribution to local priorities	• Is the current contribution of the service properly recognised? • Are there significant market opportunities with other Council services and public agencies to support expansion?
Service design and integration	• What is the best combination of services that is most likely to meet the outcomes required? • Does the archive service (or its constituent parts) have greater synergy with the library or museums or other services, including those of other organisations in the locality?
Financial affordability	• Can the service cope if the funding model changes or core income for the service is reduced? • Are future targets for income generating activities realistic?

Armed with answers to these questions you will be in a position to consider how the service might deliver the benefits envisaged in the business case across the different elements of governance and the service specification within the contract. These range from generic areas of local authority corporate services and contract governance, through activities common across the cultural sector, to those elements specific to the archive service.

4.2 Thinking corporately

Overview

This section focuses on the overall corporate challenges in the design of the spin-out which the archive service needs to influence, in particular how the contract should reflect the partners' vision for the new organisation and its relationship to the Council in the future. The level of detail required within the contract will be determined by the degree of control the local authority wishes to continue to exercise, and whether the authority has decided to procure the services of a spin-out via a contract or to enter into a grant-funding agreement.

- Many aspects of the management of the archive service and collections may not have been discussed at this level before. This is an opportunity to raise the profile of the archive while managing the risk of micro-managing aspects of the service more than is warranted.
- Public accountability and responsibility for statutory duties need to be balanced against the freedom and flexibility which will drive innovation. If the spin-out aims for charitable status it will need to demonstrate its independence from the local authority.

Assessing the Council's appetite for control and flexibility

Different aspects of the services may require a different approach to the level of control which the council wishes to exercise over the spin-out. For example, the monitoring of performance to maintain statutory obligations for public records will require a tighter and more output-focused performance monitoring regime than developing community engagement programmes, for example.

Key public-facing aspects of the service, like opening hours and charging will be politically sensitive but have a major influence on the contract price and the financial strategy of the spin-out.

The council and spin-out team should identify across the elements of the spin-out contract and service the degree of control or flexibility which is appropriate, and consider the implications for the archive service under the different options being assessed.

We have identified five key elements of the contract and specification for which the council's attitude to control and risk need to be defined in order to guide the development of the spin-out. The following table suggests a spectrum of 1 to 5 between 'loose' and 'tight' which can help you discuss with colleagues and the Council what the parameters need to be.

A scale for assessing levels of control within the contract

Element	Loose	Preferred position 1 2 3 4 5	Tight
Fees and charges	No control		All prices controlled
Services	Broad outcomes set		Detail defined
Performance	Little monitoring		Comprehensive monitoring
Governance	Overview maintained		Detailed scrutiny
Contract Price	General price		Complex price schedule

The council's preferred position on this spectrum may change over time as the relationship between the partners develops and the spin-out demonstrates its effectiveness.

The archive service will need to address a number of factors and potential risks relating to corporate-wide aspects of the spin-out.

Governance:

The governance of the spin-out will engage a number of key issues including data and information, ownership and its board of directors or trustees. For example, a local authority risks penalties for breaching FOI or data protection laws if duties are not upheld by the spin-out. Responsibilities for public records and material from Acceptance in Lieu Scheme will continue. We therefore strongly recommend that ownership of local authority archive collections is retained by the council.

Getting the right skills mix among trustees and directors of a high calibre will determine whether the spin-out is able to operate effectively and ensure that these governance issues are handled correctly. For example, monitoring risk for the collections and data, as well as the specific strategic skills around legal, finance and income generation which will be needed among board members.

Staffing:

The spin-out will require a different mix of capacities and capabilities of staff to deliver and develop archive service including professional skills, commercial and entrepreneurial skills, and community involvement. Assessing what implications these will have for the archive service's team of staff, and its volunteers, will be an important contribution to planning the organisational structure and any changes implied. Given the likely size of an archive staff team it will be important to be realistic about what can be achieved alone across this range of activities.

Buildings and Maintenance:

The service's buildings will be one of the spin-out's main assets, but their maintenance will be governed and planned in a new way after spinning-out. Taking account of storage and access standards will be vital for maintaining or gaining Archive Service Accreditation. Furthermore the ownership of existing materials for conservation, preservation and access will need to be clarified or there will be a cost to the spin-out.

Support Services:

If the spin-out continues using some or all of the Council's current support services it could help ensure the spin-out can begin operations seamlessly, but this may have an impact on its ability to achieve savings in the short-term.

Partnership and contract governance:

The council's preferred level of control for service standards of performance monitoring of the spin-out may be different from current practice within the council. There is a risk that the council micro-manages performance rather than ensuring maintenance of quality standards like Archive Service Accreditation.

Equally, the service needs to develop a outcome framework and logic model appropriate for a commissioning relationship with the council and other potential funders. A logic model, or similar tool will help you plan and articulate how you will achieve and evaluate your objectives and can demonstrate your impact on outcomes.

Communications:

Elected members will need to be confident that lines of accountability to the public are clear for the archive service after spinning-out. This will include appropriate avenues and recognition for stakeholders and communication protocols with the media and funders, as well as how the service markets and promotes its work through print, online and social media.

Client-side requirements:

Depending on the level of control which the council wishes to hold, and the scope of the services, the council will need to retain sufficient skills to manage the spin-out contract. Through a period of transformation the council risks losing corporate memory valuable to the contract governance and future spin-outs. Plans need to be made for the clienting of the contract (even if light-touch) and ensuring they have enough skills, knowledge and clout in the organisation.

The following check-list summarises the questions you should ask about the design of the spin-out across all these areas.

Checklist of corporate-wide issues

Area	Checklist of key questions for archive service
Governance	• Does the council fully understand the statutory duties for information and data that it will continue to bear after spin-out? • Is there a clear understanding of the different approaches needed for civic records, public record and private archives? • Have the contract and governance protocols ensured that ownership of the collections and the oversight of the council's statutory duties are upheld and monitored? • What are the skills which will help the archive service manage its finances and deliver its vision and objectives, beyond archive expertise?
Staffing	• Does the spin-out retain sufficient professional archival skills to ensure Archive Service Accreditation standards are maintained? • Does the archive service have access to fundraising experience, and a strategy for community involvement?
Buildings and assets	• Are the capital investment and maintenance needs of buildings clearly recognised and agreed in the contract? • Are the respective responsibilities of the Council and spin-out for maintenance and protection of archival materials clearly identified in the lease and contract? • Has the value and cost of existing conservation materials including archive boxes been accounted for?
Support services	• Has the business case addressed the support service needs of the archive service? • Does the contract allow for future review of support services and procurement to enable the spin-out to innovate and achieve value for money?
Partnership and contract governance	• Do you have a clear understanding of how collections management and service standards are to be addressed within the contract and separate protocols reviewed regularly, depending on the council's attitude to control?

Area	Checklist of key questions for archive service
	• Have targets and the monitoring framework for the service been underpinned by a logic model, and do they take account of the current quality of data? • Are the duties of the client clearly identified for ensuring that agreed records are transferred to the archive spin-out by council directorates?
Communications	• Do contract governance protocols cover proactive and reactive liaison with the council's communications department? • Does the spin-out have a communication and marketing strategy for stakeholders, the media and the public?
Client-side requirements	• Has the client-side resourcing taken account of its statutory duties towards the archive service? • Has the process of spinning out been properly documented to assist the future partnership?

Further reading

- Charity Commission (2009) The Independence of Charities from the State - *provides guidance on how the Charity Commission's criteria for assessing whether any charity is properly constituted as an independent organisation.*

- Local Partnerships (2013) Spinning out of whose control? - *sponsored by HM Treasury and the LGA, this briefing paper looks at issues of control during the spin-out process.*

4.3 Thinking culturally

Overview

The importance of critical mass will usually determine that an archive spins as part of a package of wider cultural and community services. Due to their relative size and synergies in their operating model and market, archive services are usually considered for spinning out as part of a wider portfolio of cultural services including library and museum collections and other cultural and heritage assets.

- Community services and assets like archives have a strong relationship with their existing customer base. This is both a strength and a potential challenge when seeking to innovate, change and grow the business.
- The question of control and flexibility within the contract will again determine whether politically sensitive issues within the community can be managed by the partnership in a strategic and responsive way.

How to design an innovative cultural spin-out

The degree of flexibility which the local authority wishes to grant the spin-out will have a strong influence on its ability to innovate but comes with greater uncertainty and risks. This section poses a series of questions to be considered for all cultural spin-outs in different scenarios where critical factors within their business models will be governed by the degree of flexibility or control which the local authority wishes to grant the new organisation.

Access and opening hours:

Beyond the standards required to uphold its statutory duties and maintain Archive Service Accreditation, the contract parameters will determine how the spin-out can vary access times and opening hours of facilities, and respond to changing patterns of usage or anticipate future needs. A spin-out may be able to gain new audiences by targeting its opening hours, but this may impact on existing users.

Charging and Fees:

Aside from restrictions to charging necessary to uphold statutory duties and Archive Service Accreditation, the contract will prescribe what scope the spin-out has to vary charges and fees. These will be an element of income generation which the service can easily control, but any negative effect on important groups may be unacceptable to the council.

Income Generation:

If a significant proportion of the service's future revenue is reliant on business development and generating new income, it will be vital to ensure that all rights to that income have been agreed in the contract. Conflicts may arise if it is not clear whether the spin-out can exploit the income-generating potential of its collections, for example from licensing of digital images. If the council is hoping to reduce the cost of the contract, it would make sense to incentivise the spin-out to increase its income.

Commissioning:

The contract price should enable the spin-out to plan delivery of a quality service which contributes to broader council priorities and withstand future reductions in funding. The spin-out will need to develop skills to compete openly for the renewal of its own contract. When other council services are considered for externalisation, the spin-out will want to be in a good position to compete to take on more services.

Fundraising and Accountability:

If fundraising opportunities are a significant driver within the business case, the spin-out must be seen as a credible organisation which can generate confidence and a track record to attract future funding. An in-house service may still be able to exploit fundraising potential not available to the local authority through a development trust or Friends' charity. The spin-out may be in a highly competitive market or an undeveloped culture of individual giving. The external perception of the spin-out as an investment for funders is crucial to determining the benefits of spinning-out in this scenario. Issues such as the length of the contract will influence donors' willingness to invest in the spin-out.

Checklist of issues for a culture spin-out

Area	Checklist of questions
Access and opening hours	• Has the service developed a strategy which takes account of the effect on performance and of future changes to funding from the local authority? • Is there a needs analysis and customer research and consultation which will support a strategy to manage these risks and develop the business?
Charging and fees	• Does the service have a good understanding of its cost base to understand the real cost of its services? • Has the service carried out a market analysis to understand the potential for earned income from its services?
Income generation	• Have the aspirations for income generation been supported by a market appraisal and robust sensitivity analysis? • Have commercial skills and experience been included in the capabilities of the operating model?
Commissioning	• The service should have a strong understanding of corporate objectives and an outcomes-based framework for planning, delivery and evaluation of its service. • Has it evaluated this against other local commissioning bodies to enable it to take advantage of other opportunities to provide services to deliver community outcomes?
Fundraising and accountability	• Has the service developed a case for support for the spun-out organisation to take to funders? • Is the business model underpinned by a fundraising strategy which takes account of local market conditions for cultural philanthropy and the potential of the spin-out? • Have all existing funders been consulted at an appropriate stage during the spin-out process? • Has the council considered any impact on existing local charities of an additional player in the market? • Does the governance model and contract take account of existing grant agreements and contracts and concerns of funders?

4.4 Thinking about the archive itself

Overview

Although archives are a discretionary public service, local authorities have statutory duties towards records they hold and towards information and data. The archive sector is changing rapidly and meeting the challenges of digital transformation and wider societal trends which have huge implications for the way in which traditional council archives services are re-thinking their future.

- Local authorities need to understand their statutory duties towards different types of public record and for information and data, and the implications of spinning out the archive service.
- Some of these issues may not have been discussed in detail before at this level. It will be important to consult key bodies including The National Archives, and any current funders of your service like the Heritage Lottery Fund, at each stage of the spin-out process.
- Archive services' ambition for meeting challenges like 'born-digital' records and digitisation need to be taken account of in the spin-out contract.

What's special about archives in a spin-out

Most of the biggest challenges which will face an archive service seeking to spin out are generic to wider packages of services as described above and as illuminated in the case studies. However, a number of technical and legal issues relating to archive collections are crucial to address. Processes of accessioning and records management may not have been the subject of such high profile scrutiny within the authority before. The spinning-out process is an opportunity for the archive service and the local authority to clarify the statutory framework and processes around collections management and develop a flexible relationship which will allow the spin-out to innovate while protecting the local authority from legal risks or reputational damage.

The local authority needs to understand its statutory responsibility towards freedom of information, data protection, Environmental Information and the re-use of Public Sector Information. It also needs to understand that it will continue to retain these duties itself following an archive spin-out. This also applies to archives' status as a Place of Deposit. The authority should understand its responsibility for different classes of 'controlled' records.

Exploitation of the intellectual property of archive collections, where owned by or assigned to the local authority or spin-off, will have much in common with other cultural collections, for example in rights to digitised images. Other matters, like the benefits of future collaborations and procurement need prior agreement and, in future, checking that commercial licensing and any exclusive arrangements are permitted by the cultural sector flexibilities in the UK transposition of the Public Sector Information Directive.

Ownership of collections should continue to rest with the local authority, and in the case of material granted through the Acquisition in Lieu (AIL) scheme, cannot be transferred. Depositors' interests and concerns should be addressed. The management of collections itself may best be handled through a protocol separate from the contract, which can be reviewed and revised regularly without the need to revise the basic contract between the spin-out and the council.

TNA's Archive Service Accreditation standard provides a structure for formulating questions to ensure the spin-out addresses all the fundamental aspects of the archive service.

Checklist of archive specific issues

Area	Issue
Organisational health	
Governance	☐ Does the local authority have a good understanding of its statutory duties to different forms of records, information and data? ☐ Do the spin-out's constitution and contract recognise these continuing statutory duties? ☐ Do the governance protocols allow the spin-out sufficient flexibility to operate efficiently and be innovative?
Staffing and skills	☐ The spin-out must have adequate capacity and up-to-date skills to carry out statutory responsibilities on behalf of local authority. ☐ The client-side needs to retain knowledge of the regulatory framework for performance monitoring and managing risk.
Buildings and Assets	☐ There needs to be clarity within the contract about maintenance and repair of buildings to ensure required standards of storage, preservation and access to collections. ☐ The ownership of materials and other assets for storage, preservation, conservation, access and handling must be accounted for in the contract.

Area	Issue
Collections	
Ownership and development	☐ We recommend that new acquisitions become part of local authority owned collections. Do the contract and governance protocols include a process for making decisions about accessions, as these will create future liabilities as well as assets for the owner?
Collections care	☐ Have the management and costs associated with storing and care of closed records been agreed in the contract?
Intellectual property and commercialisation	☐ Has the handling of IP rights issues been taken into account in the contract or detailed in the governance protocols?
Born Digital	<mark>TBC</mark>
Access and stakeholders	
Access policies	☐ Does the proposed spin-out meet the service's required standards for access and its ambitions for the future?
Market research	☐ Has the business case for the spin-out included research data on the archive and records management market?
User data	☐ How will existing user monitoring and evaluation need to change in the spin-out to support its business development strategy and performance management by the council?
Learning and outreach	☐ Has the archive service based its learning and outreach services on evidence from the local authority's needs assessment and consultation with its own users and stakeholders?

Further reading

- The National Archives (2012) [Alternative Governance Regimes for Archives](#) - *details local authorities' statutory responsibility for each type of controlled record and our recommendations on ownership and collections management in spin-outs.*

- The National Archives (2012) [The National Archives Archive Service Accreditation Standards](#) - *provides detailed guidance on applying for, meeting and maintaining the national standard for archive services.*

Case study 4: an archive service that's core business

Organisation

London Metropolitan Archives (LMA) is an in-house service at the City of London Corporation and is the largest local authority record office in the UK.

Summary

Like all the City of London's services, it has been through a service review process and was not considered to be a service that should be spun out.

Scope

LMA has a budget of over £3m and 80 staff (full-time equivalent). With 100km of archives, LMA is the second largest archive organisation after The National Archives. Its records cover almost 1,000 years of London's history, dating back to 1067.

What's unique?

LMA is seen as one of the Corporation's core services, delivering on its mission to serve not just the Square Mile, but London and the nation as a whole. As part of this commitment, LMA engages in London-wide projects, such as 'Irish Voices' which is tracking the history of St Patrick's Day celebrations across London. LMA also has the scale that would enable it to be commissioned by other London Boroughs to provide their archive services or lead partnership projects with them.

Results

The scale of LMA and the quality of its records means that it is better able to secure investment. Examples include the creation of its Mediatheque and its extensive digitisation programme. LMA's Director, Geoff Pick, envisages that, in future, as digitisation progresses, LMA will be able to concentrate more on supporting community-led projects, working with other organisations across London.

Key learning point

Geoff Pick reports that: 'My role is to make sure the service is at the heart of what the City of London as a Corporation wants to do'.

For further information

The various features of LMA can be explored via this link:
http://www.cityoflondon.gov.uk/things-to-do/visiting-the-city/archives-and-city-history/london-metropolitan-archives/Pages/default.aspx

Chapter 5 – Life in a spin out

5.1 Overview

What is life like when you do spin out?

Spinning out can be a major shock to the system, requiring shifts in leadership styles and the development of new skills. Preparing for life in a new spin out can be daunting at first - how do you know where to begin and what to expect on your team's first day? We speak with colleagues at a number of thriving spin-outs for their perspectives on the challenges they have faced, which we outline in this section.

How do you survive and thrive?

Getting your spin-out up and running is the first step; keeping it 'spinning' is the next. We investigate what leaders and managers of successful spin-outs are doing to keep things going and ensure their services thrive in their new worlds.

Spinning back in

Sometimes, things don't work out or go quite to plan. But how do you know what to watch out for, or when to bite the bullet and accept it may be best to seek a new arrangement? We discuss the experiences that 'spun-in' services have had, following decisions to move back in-house after initially spinning-out.

5.2 Running the new organisation

What should you be doing on day one?

The success of a spin-out can - at least, in part - rely heavily on its leadership rising to new challenges they face and being aware of the fresh options they have available.

There are a number of key considerations for a spin-out manager to keep in mind when beginning to bring their new service to life as we set out below:

- Be clear on, and return to, the reasons why you are spinning out: it is not a silver bullet for financial issues. As one interviewee told us, "*spinning out hasn't made us immune to cuts from the Council."*
- Be considerate of where your team's '*heads are at*'. Avoid jumping in too quickly with too many changes - as one interviewee told us, you must "*judge the pace accordingly".*
- Seek out and analyse the opportunities for improving your service. You are now likely to have greater flexibility and autonomy in terms of the pace with which you can make decisions now you are operating outside of a council's, or a previous organisation's, bureaucracy. As one interviewee told us, "*we have more freedom to do more than in a local authority - my job is making the space between politics, funding and the service*".

Establishing your new governance

Some spin-outs express relief at moving to new 'light touch' governance regimes, freeing them from time-consuming, restrictive or antiquated processes. In light of this, it is crucial to have access to your own trusted independent legal advice when establishing your new governance arrangements and to not rely solely on the local authority's legal team - as one interviewee told us, "*we didn't know the type of questions we should be asking of legal*".

If you have not yet finished recruiting to your new management board, new trustees or directors will need to be appointed. It is essential that all board members are trained in their new responsibilities (and personal liabilities), whether as charitable trustees or company directors (or both). You will also need to establish reporting and decision-making protocols and make sure your managers and staff are briefed on how these new arrangements work.

It is also important to ensure that your service has fair representation as part of any new arrangements. Sometimes, when joining an existing spin-out or operating as part of a bigger organisation, archives can be swamped by voices representing larger services. It is important to insist that archives receive strong and equal representation at the top table in comparison to other services, and that services of greater size, budget or user footfall do not solely drive the decision making of the whole organisation, leaving your archives service a passenger.

Community and staff owned spin-outs can benefit from their owners having more of a vested interest in their success. However, in terms of governance, there can be challenges lurking beneath the surface. Managers should be mindful of the involvement of community members looking to shape the direction of the spin-out with their own agendas (for better or worse), as well as how to tactfully focus the spin-out's, and its enthusiastic supporters', limited resources on 'bigger picture' activities. instead of time-devouring micro-issues.

Business planning, management and operations

A spin-out must avoid being set up to fail. By this, we mean thinking short, medium and long-term about your new business plan and ambitions, using SMART objectives and breaking down your objectives into simple tangible tasks. It is important for a spin-out to have access to such skills from an early stage - as one interviewee told us "*we didn't initially have business-minded acumen*".

During the planning stage that before spinning out, you probably contributed to an initial business plan for the new organisation. Now that your organisation has launched, this will need to be revisited and refined further. It is particularly important to ensure that the archive service's contribution and efforts are addressed in the plan, so that the service has a prominent profile and so that it secures any support resources needed.

A business plan for a stand-alone organisation is even more critical than when operating within a local authority as the business decisions made and the way the spin-out is organised and managed can have a much more immediate impact on its success - or even its failure!

It is also important to develop a programme of operational improvements for day one of the new spin-out. Achieving accreditation, and maintaining it, is one element of such a programme - as one interviewee told us, "*publicly recognised targets are important. We have a formula we follow: 'this' plus 'this' equals a good service".*

New leadership and management style: the new culture

The success of your new spin-out will rely upon the development of new leadership and management styles and the nurturing of a staff culture that is fit for new challenges.

Examples of the new leadership and management competencies required in a spin-out are set out in the table below.

Examples of the new leadership and management competencies required in a spin-out

Competency	Explanation
Business acumen and entrepreneurship	Commercial nous, the ability to 'sniff out' an opportunity to develop new offers, generate sustainable income streams or improve the service's profile - as one interviewee told us, "*we create our own opportunities".*
Focus on bottom line	An understanding of the financial fundamental, including cashflow, profit and loss and how to ensure that services are priced in a way to deliver solid financial returns.
Community involvement and engagement	Imagination and ability to involve, engage and inspire the local community in the work that your archive service does. The local community can be your biggest advocates and capture the ear of your local politicians (and funding bodies).
Generating trust	Display honesty, transparency and good judgement to build trust and bonds with your service's stakeholders - both internally and externally - as one interviewee told us, "*do people trust you? This has to be earned".*
Leadership that values archives	Professional expertise of archives services, their strengths and the challenges they face - as one interviewee told us, "*archivists are often managed by librarians; this is not always good. You are looking to the archivists to say what is needed".*
Partnership building	Curiosity and intuition to seek out new opportunities for forging mutually-beneficial partnerships with (not necessarily obvious) partners, whether public or private sector, health, community-led, voluntary, local or regional.

Competency	Explanation
Political awareness	Astuteness to understand and anticipate the local political ecology, and then make decisions for your service informed by this insight. Your local politicians manage the levers that (will very likely) control your funding streams from public sources - so it's probably wise to make them your friends.
Staff involvement and engagement	Involving your staff as much as possible in the future journey for the service. Can they co-create the vision for the service or help shape the route you collectively take? This can inspire shared ownership and pride in the successes you achieve together.
Value adding	Identify opportunities to help your staff, or partners, to develop new skills or improve the profile of your service - as one interviewee told us, *"we value add by upskilling staff when they work with us as part of any project"*.

Managing the money

One of the most intimidating challenges facing a new spin-out can be the need to now carefully plan and manage your own financial destiny; something that may previously have been seen as something that would 'take care of itself' in a relatively predictable service.

Your spin-out will need a good financial management system and your own finance professional(s), possessing commercial expertise, a detailed understanding of profit and loss and the various complex VAT issues that will affect your service now you are no longer under the regime of a local authority. Be wary of underestimating this - as one interviewee told us, *"we didn't put enough experience in Finance originally. It needs a different type of person than finance people within the Council."*.

You need a competent and experienced qualified accountant in one person or access to a team of people who give you the service you need. A checklist of the financial essentials and key skills you are likely to require are shown in the table below:

Checklist of financial essentials, experience and key skills for a spin-out

- ☐ **Budgeting**: commercial budgeting and monthly reporting.
- ☐ **Statutory arrangements**: for accounting records and financial reporting (which differ depending on corporate structure used).
- ☐ **Cashflow**: the disciplines and practices involved in cashflow management.
- ☐ **Reserves**: the key areas in which provisions should be maintained.
- ☐ **Taxation**: accounting practices for PAYE, corporation tax and VAT.
- ☐ **Controls**: internal controls and internal checks including management of bank accounts
- ☐ **Charity**: the specific treatment of restricted and unrestricted funds (which differ depending on corporate structure used).

- **Profit and loss**: managing a profit and loss account ('Statement of Financial Activities' in the case of charities).
- **Audit**: audit and independent examination arrangements.
- **Trustees/company directors**: providing appropriate information and support for decision-making.
- **Company structures**: setting up and operating effective subsidiary companies.
- **Business planning**: for new ventures and income generation exploration.

Sorting out your support services

A new spin-out will also face a number of choices of where to source its support services from - i.e. HR, finance, legal and ICT services, plus occasionally others. Often trusts will rely on the council's support services, putting in place an arrangement to cover a transitional period and the foreseeable future. This can certainly be a help in the short-term, with your service benefiting from familiar faces and points of contact during a potentially bumpy start.

However, the type of support actually required by a spin-out is likely to be rather different.

Depending on your service's new ambitions, It can make sense to seek out simpler or cheaper arrangements - e.g. using 'pay as you go' specialist legal services or a new piece of financial software. Spinning-out can offer you a great opportunity to review your support requirements, identifying what you really need in discussion with your teams (and hopefully help you to make some new operational efficiencies in the process). Taking the time out early in your spin-out's journey to build up this new support team, with a fresh focus on colleagues with small organisation and commercial expertise, is very much in your interest and will be worth the resource investment you make long-term.

5.2 Managing your relationships

Archives: a small fish in a smaller pond?

Despite our best efforts, archives can sometimes be treated as an after-thought by a larger organisation, unclear on the work you do and the value you add for your users and the wider organisation. When an archive service spins out, the need to develop and maintain relationships to help share your stories is ever important for cementing your place in people's minds (and funding bodies' budget plans) - as one interviewee told us, *"when you spin out, that's not 'it' - you need to nurture your relationships long-term".*

Integrating with an existing cultural trust, including a larger trust

Whilst an archive service may be small in terms of staff numbers, it possesses a unique personality with a clear set of legal responsibilities. These responsibilities must be recognised and supported as part of your integration with an existing, or larger, body.

Joining a new organisation can be a significant challenge - the 'new kid at school' syndrome. Creating opportunities for your teams to meet and engage with future

colleagues are a good idea to help kickstart the growth of close working relations - as two interviewees told us, *"we are originally seen as 'alien'… there was a feeling of two organisations to try and break down".*

There needs to be a proper induction and welcome to the new organisation and both managers and staff will need to be involved in managing the transition to any new ways of working, such as procedures and processes.

Maintaining active relationships with Council, other partners and the local community

Maintaining a strong partnership between a spin-out and the local authority, its officers and Members is essential. As (very likely) your key funder, working hard to engage with them and share the value of your service will stand you in good stead long-term - as one interviewee told us, *"we maintained our relationship with the local authority; our partnership with the council put us in a good position for negotiating our new agreement".* This can take the form of simply letting colleagues know about your work and successes, involving them where possible and reaching out to services where opportunities to partner on projects arise.
Whilst it is important for you to be clear on, and return to, the reasons why you are spinning out, it is equally important for your local authority (or original organisation) to remember. Engaging them in the support requirements you have for successfully spinning-out, developing your sustainability and preserving their corporate memory about the rationale for spinning-out is important, not least for mitigating against future disputes or confusions following senior staff turnover.

A well-connected spin-out tends to be a successful spin-out. Seeking out new partners, as well as maintaining positive working relationships with those you already have, is wise. Looking to other museum, library and academic colleagues or institutions can bear fruit, so it's a good idea to regularly horizon scan for opportunities to broker new conversations and partnerships, as well as share your successes, challenges and insights into what is happening within your respective sectors.

Lastly, it is important to be proactive about involving and networking with your local community. These people are likely to make up the majority of your users and will be the fiercest, most passionate advocates (or otherwise) of your spin-out. As one interviewee told us, "*it can be difficult to explain to the public what 'spinning-out' mean*s", so be fearlessly innovative in seeking out fresh opportunities to share stories that promote the benefits and great work of your service (in its new spin-out guise). Networking with the local community can be beneficial to your service; it will raise awareness of your team's existence and can lead to new business inquiries or project opportunities - as one interviewee told us, *"we are locally driven; we reflect the local flavours in the personalities of our services".*

Contract management

Contracts and/or an SLA (service level agreement) are essential documents for a new spin-out to have in place for managing its work with a client, or funding, organisation. They can help you to resolve any disputes over scope or expectations, as well as the red lines regarding separation and control. Always draw on your

team's access to trusted independent legal advice when drawing these up - don't always trust your client's legal team to be (completely) impartial!

It is also important to have strong structures and processes in place for capturing and monitoring your service's performance, as these are likely to be analysed during any contract management and/or renewal meetings, especially ones linked to funding settlements. As one interviewee told us, *"we understand our statistics"*. The key elements of contract management and a good practice contract management framework are shown in the figure below:

Key elements of contract management (National Audit Office, 2008)
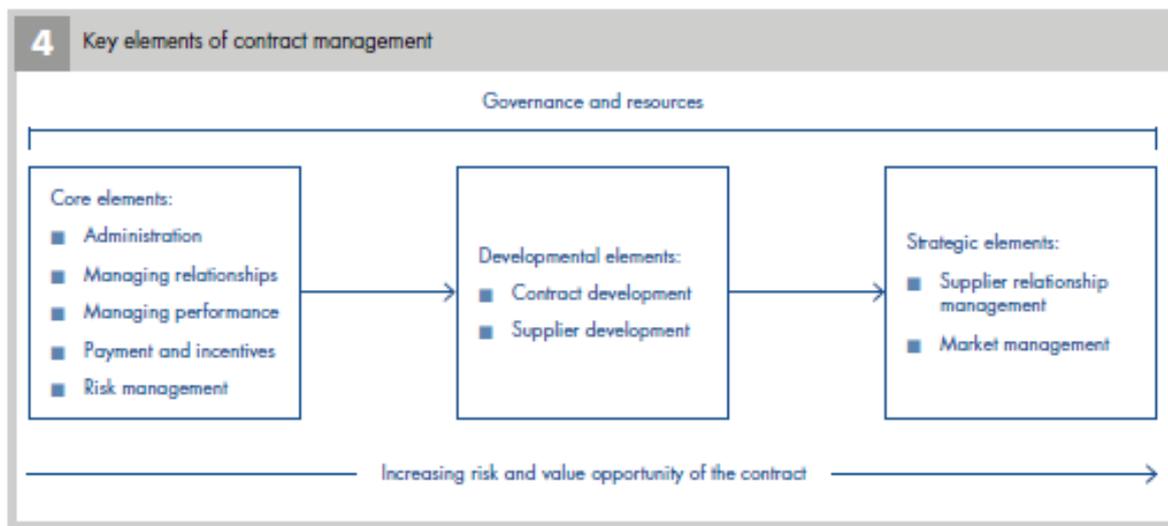
In section 3.6, we outlined the three layers of contract governance that would normally be put in place. Whatever was agreed with the client, this contract governance should be started as soon as possible so that both sides (at all levels of contract governance) are focused on understanding and helping to resolve any initial teething troubles. This can help to build the trust and confidence needed for when the contract is changed or developed.

5.3 Sustainability and growth

Maintaining your sustainability, and then growing your business, is one of the main challenges facing any fledgling spin-out. It is important to be realistic about the ambitions for developing your service offers - thinking short, medium and long-term - whilst also delivering your day to day operations and, very likely, efficiencies. As two interviewees told us, it's about having a *"real commercial focus on the bits that can be commercial"*, whilst simultaneously "*increasing access through all means"*.

Keeping your contract

As touched on in the previous section, building and sustaining your relationships are absolutely key and tie in closely with contractual management. During the recent period of austerity, public services have continued to be asked to making cuts, which can lead to shorter contracts, driven by less certainty about everyone's future

budgets. Rather than seeing this as the harbinger of financial doom, some spin-outs are treating this as a challenge to be overcome and an opportunity to develop further - as one interviewee told us, "*We have been asked to make cuts, so we try to look at 'how can we make this work?'. We put forward an offer that may improve the service*".

The benefits of securing your contract - for as long a term as possible - are obvious. Clarity on your funding envelope, guiding your strategic objectives and alignment of resources, provides reassurance and certainty. As one interviewee told us, "*we've renegotiated for 20 years - a 15 year contract, with a possibility for a further 5. For us, this has been a really great success*".

Business development, including responding to requests from others

It is important to recognise the increased flurry in interest that your service will receive when it first spins out - as two interviewees told us, "*make the most of the opportunity when you first spin out and the visibility that brings… make sure you benefit from this*".

As you find your footing, you can then consider whether - and how - to grow your business further to help improve your future sustainability. Unless you have very tough income targets, it's wise not to rush - as one interviewee told us, this can be "*slow and steady… word of mouth*". There are some initial tasks we recommend completing to help kick start your business development efforts as set out in the table below:

Business development: list of initial tasks

Task	Explanation
Develop your offer	- Be clear about what you are selling. - Decide on your strengths and what you can commercialise. - What are 'you' - your spin-out - as a brand trying to portray? - Agree with your team what you are and what you aren't. - What's your introductory angle to potential leads?
Pipeline management	- Create, or develop, a process for identifying and following up on potential new business leads. - Pinpoint and categorise who your business leads are - e.g. suspects, prospects or networking contacts; short, medium or long-term; hot, warm or cold. - Prioritise your leads and agree your next steps - with timescales. - Are there any easy/quick wins you can follow up on? - Are there any areas you haven't explored previously or new commercial markets you would like to explore? Come up with a cunning plan for doing this.
Scan for opportunities	- Research the markets that your commercial offers operate in. - What can you see - what patterns are there, who is your competition, who is the current market lead, what is your niche?

Task	Explanation
	• Identify opportunities as they arise - then act on them swiftly.
Network and be inquisitive	• Be visible - proactively network, engage and interact with others. • Be receptive to requests and queries from others. There may be a chance to increase your service's profile, if not a commercial or business opportunity.
Be realistic - and, most importantly, shrewd	• Focus your available resources on the most attractive business development opportunities. • Be realistic about how much time it takes to do this. Consider "what you need" against "what would you like", and when it is needed by. Does it make business (i.e. financial) sense to proceed?

Generating income

As one interviewee told us, *"be under no illusion - it can be extraordinarily difficult to generate income"*, so it is important to be clear and understand your income generation options, whether they lie in commercial or fundraising activities. Some spin-outs have refocused their Friends Groups' efforts on fundraising as one aspect of income generation. Commercial activity - i.e. charging for services - is another challenge - as two interviewees told us, it's about *"balance - making a slight profit, but not being too untenable"* whilst recognising that you operate in *"a niche market, that does generate income"*.

However, be prepared to be a victim of your own success - as one interviewee told us the "*target goes up and up - the expectation shifts are ongoing*". With this in mind, agree an appropriate and balanced income target for your service with its senior stakeholders.

"*Having a go*" and being imaginative is important, as one interviewee told us. Reintroducing outreach events, exploring crowdfunding and sponsorship opportunities are areas that have all been explored by spin-outs as part of new income generation efforts.

Increased income generation efforts can also save your team from the impact of cuts - as one interviewee told us, *"a general reduction of hours was being proposed for our team. The proposal was overturned, but it was very much on us to make up those costs that would have been saved. We have worked really hard and have now almost met our income target".* However, it's important that you understand whether your income is actually going to generate a return after you take into account the cost of providing the service (including a share of your overheads). It's all too easy to increase your income, while making a loss!

For more information and advice on generating income, please refer to The National Archives "Income Generation Guide", available for free download on their website.

Managing the risk of growth

Being part of a wider organisation - i.e. having critical mass - is seen by some spin-outs as essential, more so than it has ever been previously. This can help to mitigate risk and support your growth and future sustainability. As two interviewees told us, "*we would really struggle if we were to spin out on our own - without the critical mass (around us)*" and "*if just a single spin-out, it is pretty tough financially - especially planning*".
With this in mind, it is crucial not to allow the wider organisation to revolve in silos around you - you must be joined up and share your resources - as one interviewee told us, "*surpluses can't be preciously protected by teams and directorates*".

A spin-out's growth will rely on investment into business development and fundraising areas - as one interviewee put it, it's about providing *"access vs. generating income - finding a balance".* Choices need to be made about where to prioritise your efforts - e.g. into buildings and facilities, or project costs, such as the digitisation of your online catalogue.

As touched on in the earlier Business Development section, you may also come across opportunities to join other trusts or spin-outs. It is sensible to explore the opportunity potential, and how joining up may facilitate your mutual growth, but always return to your initial rationale and drivers for spinning-out.

Bidding for new work

As one interviewee told us, spinning-out means "*we've found the freedom and access to funding and charitable status really beneficial*". Untapped opportunities to access local community funds, private sector corporate social responsibility pots and trust funds are opened for spin-outs that do not necessarily exist for local authority archive services.

As well as taking advantage of these sources, it is important to be opportunistic and on the constant look-out - as two interviewees told us, "*we bid for grants constantly*" and "*with any funding pitch, we'll include archives in it somehow - even if it's a library project*". Many spin-outs develop a 'sixth sense' about knowing where to look and the types of project to propose that will secure funding. This intuition all comes from networking, building connections and insights into the strategic objectives of a funder - as one interviewee told us, *"know where you are and what you are. We know exactly where money will be allocated for grants. We know grant giving bodies will offer funding to struggling areas, so some more affluent areas won't attract the funding".*

Whilst it is important to bid for work, it is also important to recognise that every effort will have an opportunity cost. To assess whether developing a proposal is worthwhile, we suggest developing your own bid qualification process. We have outlined a possible framework to adapt and use in the table below:

Bid qualification process - a suggested framework

Questions to ask	Explanation
How important is this to you (and are you to them)?	Prioritisation of your efforts is prudent. Open tenders can be open to everyone and anyone, big or small. It is generally more beneficial to prioritise invite only, or follow up direct contact, invitations to bid for work.
Retain your existing clients	It may sound obvious, but it is generally more efficient to prioritise retaining your existing clients (with whom you have an existing relationship) than speculatively seeking out new clients (who will require up-front efforts to build new relationships with).
Is it within your comfort zone?	Have you done this sort of project before; can you make it work? At times, it may be best to stick to the familiar, rather than attempt the unknown.
How busy are you?	Despite the above, if your workload feels relatively quiet, is a speculative pitch occasionally worth a punt? There's no harm in considering lucrative new opportunities (as long as you review and prioritise them accordingly) against your workload and your service's ambitions to develop.
What's the value?	Every bid requires preparation, time and effort. Work out your ballpark resource cost for putting a bid together and assess where the bar should be set in terms of the project values you'll consider bidding for.
What's the competition?	Similar to the previous point - it's worth having an idea of who you're up against. Do you stand a chance - especially if it's an open tender? Can you convince the client to invite a shortlist of prospective bidders to pitch for a piece of work - saving wasted time and effort for everyone involved?
How much time have you got?	What's the deadline? Rushing a bid can lead to missed opportunities and shoddy content. We recommend spending at least a week on putting a proposal together and reviewing it collectively as a team.
Where's the work based?	Geography is important, especially if you have to consider travel and practical things like expenses as part of the work. It can be best to limit your focus on a particular region, rather than spreading yourself too thinly.
Prepare the bid as a team	Developing a bid can be hard work. Always aim to work as a small team for sense checking, quality assurance (and your own sanity as the clock ticks down towards a deadline!)

5.4 Spinning back in

When to think again

Sometimes, things don't work out; go quite to plan; or new policies emerge. When the warning signs on the dashboard start lighting up, it's often best to be honest with yourself, your staff and your client, before reviewing your position, possible options and recommended next steps for your service. It's important to recognise that both you and your client may have different, or aligned, perspectives on what is or isn't working. As always, good two-way communication is important to help unpick these underlying issues.

Examples of typical warning signs that may indicate your spin-out is on the rocks are outlined in the table below:

Examples of the warning signs for a struggling spin-out

Warning sign	What it may indicate
Feasibility studies, VFM assessments and option appraisals	Constant, or unexpected, studies and option exploration suggest uncertainty on behalf of the funding organisation - as one interviewee told us, *"we are having ongoing conversations about support services".* It's a good idea to understand what is driving this curiosity - is the client running out of money, or is service performance not quite what they are expecting? What can you do about this?
Funding uncertainty, stalling on contract extension discussions	Funding uncertainty is a constant for the 21st century UK public sector. Unfortunate implications of this can include muted hand-wringing and unanswered emails, whilst future options are weighed up and a best-way forward determined. This can lead to uncertainty for your service - as one interviewee told us, *"best value was tested again"*. On the flip side, once your contract is finalised it offers you reassurance and "*real certainty for coming years*".
Lack of communication	Radio silence, or a lack of regular two-way dialogue, can mean someone doesn't want to speak with your service any more. Why is this, and can you unpick the reasons? Contract governance can often fall into abeyance (in some cases never meeting at all). While it can be tempting to go along with this, the spin-out should not allow contract governance to slip: absence is unlikely to make the heart grow fonder.
Non-archive specialists heading up a client-side team	Archives services can often find themselves at the mercy of senior leaders without professional archive experience. Making the effort to showcase your service's and your spin-out's great work is crucial when you are working within such an environment for fear of the consequences of not being seen as part of the bigger, or holistic, picture.

Warning sign	What it may indicate
References to '*client*' and '*provider*' in correspondence	It's important to work in close partnership with your funding organisations and to undertake contract management meetings to unpick any challenges or issues, plan for the future and reflect on your shared successes. Use of the terms '*client*' and '*provider*' can be loaded in certain situations and imply a distinction not consistent with a close working relationship - i.e. a '*doer*' and a '*done to*'. You may wish to review this phraseology in discussion with colleagues to be clear about the relationship your funding body seeks with you.

Why consider spinning back in

If any of these warning signs are cropping up, it may be time to consider the options for your spin-out. An initial stock-take of your current position - a simple SWOT analysis conducted with your team - can provide you with a solid baseline to move forward from and explore in finer detail, as well as air the concerns you all have.

Funding uncertainty, the breakdown of relationships ('*them and us*') and perceived drops in performance are themes that may be cited on both sides of the client/provider relationship inside a spin-out. It's important to be clear what you stand to benefit from, or lose, when you explore spinning back in, in much the same way that spinning-out was initially analysed. It will not necessarily be the silver bullet that saves you from future cuts or makes you immediately financially sustainable.

It is important not to see spinning back in as a failure: sometimes circumstances (such as funding expectations) change. Sometimes there's a change in policy on the part of the funding body and there are new service synergies that they want to explore.

However, bringing a spun-out service back in-house is not a simple exercise and there may be numerous legal issues to address, particularly if there is a disagreement between the client and the spin-out organisation.

To help structure an approach to your service's transition back in-house, please refer to the checklist in section 3.6.

Further reading

- Bohl, E. (2012) [When the Salami's Gone](#) - *outlines a set of initial tasks to complete when entering into new arrangements from p99 onwards.*

- Department for Digital, Culture, Media and Sport (2017) Stage 7 - Business Plan (https://www.gov.uk/government/publications/libraries-alternative-delivery-models-toolkit/stage-7-business-plan) - *DCMS have developed a downloadable business plan template (including guidance notes) that can help you to develop your business plan. This particular template is designed to help prepare you for spinning out, however the 'transition plan' section is not relevant once you have spun out.*

Chapter 6 - Where to go for support

6.1 Support available

Overview

A number of government departments and agencies are providing support and funding to help authorities, staff and community groups understand whether spinning out is for them. This section provides links to the most significant:

- Advice, training and funding sources.
- Detailed guidance about statutory duties and key regulatory bodies.
- How to get support from us at The National Archives.

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Role of The National Archives

The National Archives must be consulted by organisations that are responsible for the care of controlled classes of records (Public Records, Manorial and Tithe Documents, Collections Accepted in Lieu of Tax), as changes to the service may affect their status as a Place of Deposit or an Accredited archive service.

You can find out how to contact our Engagement Team and regional Engagement Managers for advice and support via our website:

http://www.nationalarchives.gov.uk/archives-sector/ask-question.htm

You can also find useful guidance, case studies and information on Archive Service Accreditation through the Managing and Governing section of our website:

http://www.nationalarchives.gov.uk/archives-sector/managing-and-governing.htm

Mutuals and the Community Right to Challenge

Cabinet Office Mutuals Information Service

The Cabinet Office Mutuals Information Service has been open to local authorities and members of staffing wanting advice and guidance on spinning out services into a Public Service Mutual. In the past, the service included access to a £10m funding stream of support which was available up to the end of March 2015. That support was drawn upon by a number of authorities spinning out their archive services.

http://mutuals.cabinetoffice.gov.uk/

The Community Right to Challenge

Under the Localism Act 2012 community organisations, including groups of local authority staff, can submit an Expression of Interest in running local authority services.

https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-challenge

The Department for Communities and Local Government has commissioned Locality and the Social Investment Business to provide support and funding to organisations wanting to explore these opportunities under the Localism Act. Further information and links can be found at:

http://mycommunityrights.org.uk/wp-content/uploads/2015/03/LOCALITY-CHALLENGE_UNDERSTANDING2.pdf

Commissioning and fundraising

Cultural Commissioning Programme

The National Council for Voluntary Organisations (NCVO) is delivering a two year programme up to June 2016 supporting arts and cultural organisations to engage in public sector commissioning opportunities. The programme is funded by ACE and delivered in partnership with Philanthropy Capital, nef and Mission, Money Models.

It is focusing on three priority areas of public service outcomes: mental health and well-being, older people and place-based commissioning.

Opportunities include a three phase training programme covering information on commissioning, demonstrating impact and building partnerships. Further resources include an online knowledge hub and case studies.

http://www.ncvo.org.uk/practical-support/public-services/cultural-commissioning-programme

Giving Value Programme

The National Archives, ARA, The Welsh Government (CyMAL: Museums Archives and Libraries Wales division), Institute of Fundraising, Public Record Office of Northern Ireland, and Scottish Council on Archives, have been awarded a grant under the Catalyst heritage: building fundraising capacity programme to deliver the Giving Value project - a three-year capacity-building and training programme to support the UK archive sector.

The project includes guidance and training across ten topic areas including philanthropy and fundraising, financial preparedness, commissioning and outcomes.

Department for Communities and Local Government

Transformation Challenge Award

In April 2014 there was an announcement of a new £410 million fund from DCLG to help councils transform the way they run local services. Further information on how to apply is available at:

https://www.gov.uk/government/news/410-million-for-council-services-that-put-people-first

Further information for local authorities bidding for funding from the Transformation Challenge Award and capital receipt flexibility 2014 to 2016 can be found at:

https://www.gov.uk/government/publications/transformation-challenge-award-and-capital-receipt-flexibility-2014-to-2016-prospectus

Heritage Lottery Fund

Transition Funding

Organisations may apply to the Heritage Lottery Fund for a grant of between £10,000 and £100,000 to help them achieve significant strategic change, become more resilient and sustain the improved management of heritage.

Regulators

Charity Commission - Guidance on independence of charities and charitable purposes. (RR7) http://www.charitycommission.gov.uk/media/95209/rr7text.pdf

CIC Regulator – Guidance on the legal structure and process of setting up a Community Interest Company and links to case studies.

https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies

Case study 5: a winning combination of track record and critical mass

Organisation

A Company Limited by Guarantee and Registered Charity established in 2007.

Summary

Vision Redbridge Culture and Leisure was originally established as a sport and leisure trust in 2007. In 2010 heritage services including the museum, archive and libraries were transferred to the trust, along with parks and open spaces. The Trust has an annual turnover of £18m and 619 staff.

Scope

In 2010, when the Council was looking at options to protect its cultural services and reduce costs, a member working panel was set up to investigate. Members were relaxed about spinning out because of the performance of existing leisure trust.

What's unique?

The breadth of services within the trust gives critical mass to support business development across the portfolio. For example, the financial surplus generated from a new play centre (supported by a Council loan) will be re-invested across the organisation. Both Vision and the Council are keen to look at ways of generating income rather than cutting services.

Results

Gareth Morley, Head of Culture and Libraries says: 'There is more freedom and flexibility to get on with running our services, from procurement to employment. It has liberated staff.' Redbridge always had a strong archive service which the Council wanted to protect and strengthen by opening to a broader audience, through the larger customer base in libraries and other areas of the Trust. 'It doesn't matter to the customer which service area it is, it's all 'heritage'.'

Redbridge did take legal advice on the statutory duties for archives. The Council has delegated all rights to exploit IP from collections to the Trust, but, in the spirit of the partnership, any significant plans would be discussed with the Council.

The strength of the partnership with the Council is considered key. The monitoring of the management contract is regarded as 'Light but robust'. There are fortnightly Cabinet Member briefings but there isn't a large client function at the Council, with the Trust reporting to one of the Executive Directors.

Key learning point

The governance of the company has been the biggest management challenge, being responsible for a business with an £18m turnover. Everyone has had to become much savvier about the commercial pressures and issues like VAT.

For further information
http://www.vision-rcl.org.uk/

Appendix 1: Acknowledgements

Steering Group membership

Caroline Edwards	County Archivist	Hampshire County Council
Stephanie Gilully	Collections Access and Inclusion Manager and County Archivist	Lincolnshire County Council
Gerard Greene	Museum Manager (line manages archives)	Vision Redbridge Culture and Leisure
Richard Hunt	Archives Manager	Vivacity, Peterborough
Janet Tall	Head of archives and local studies	Somerset
Richard Taylor	Former City Archivist (job share)	York City Archives
Victoria Hoyle	City Archivist	York City Archives
Isobel Hunter	Head of Engagement	The National Archives
Mairead O'Rourke	Strategic Engagement Manager	The National Archives
Tina Morton	Engagement Manager London	The National Archives
Keith Sweetmore	Engagement Manager North	The National Archives
Andrew Holden	Principal	Activist
Helen Thomas	Director	Activist
Eric Bohl	Director	Activist

Interviewees

Carol Tullo	Director, Information Policy and Services	The National Archives
Fiona Talbot	Head of Museums, Libraries and Archives	Heritage Lottery Fund
Laura Caton	Senior Advisor	Local Government Association

John Chambers	Chief Executive	Archives and Records Association
Paul Bristow	Director of Strategic Partnerships	Arts Council England
Brian Ashley	Director of Libraries	Arts Council England
Padma Juggapah, Anthony Karabinas	Accountability and Transparency Division	DCLG
Tim Decamp	Head of Mutuals Programme	Cabinet Office
David Bancroft	General Manager	Culture Coventry
Geoff Pick	Director	London Metropolitan Archives

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