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# Leisure Services Review – Merthyr Tydfil County Borough Council

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This document is also available in Welsh

The team who delivered the work comprised Martin Gibson, Allison Rees and Sara-Jane Byrne under the direction of Jane Holownia.

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# Summary report

## Summary

### What we reviewed and why

- 1 In July 2014, Merthyr Tydfil County Borough Council (the Council) approved establishing a non-profit distributing organisation (NPDO), known as Merthyr Tydfil Leisure and Cultural Trust (the Trust) to manage and deliver certain leisure and cultural services.
- 2 Commencing on 1 April 2015, the Council entered into a contractual agreement with the Trust to pay an annual management fee of £2.5 million to the Trust for operating a portfolio of leisure and cultural assets that includes:
  - Libraries
  - Leisure Centres (Aberfan and Merthyr Vale Community Centre and Merthyr Leisure Centre)
  - Cyfarthfa Park
  - Cyfarthfa Museum and Art Gallery
  - Community facilities (Treharris and Gurnos community centres)
  - Outdoor sports facilities
- 3 The Council has raised concerns with the Trust that the Trust has not met all its performance targets and all the requirements of the contract. We are aware that the Trust's financial position is challenging. The Council gave additional funding to the Trust in November 2017. However, the Trust is still projecting an operating loss for 2018-19 and is developing a business/recovery plan to address the financial and performance issues.
- 4 For this review, we use the term Council leisure services to mean those defined under the Council's contract with the Trust.
- 5 We undertook the review in March 2019.

### What we found

- 6 Our review sought to answer the question: Can arrangements for the delivery of leisure services be improved?
- 7 Overall, we found that outsourcing the Council's leisure and cultural services has protected the services from cuts, but the services lack strategic direction, are restricted by the current contract and require more effective oversight. We reached this conclusion because:
  - the Council does not yet have an approved vision and strategy for its leisure and cultural services;
  - there are good arrangements to monitor the delivery of the leisure and cultural services contract, but both the Council and the Trust recognise that

elements of the contract are restricting the Trust from achieving its commercial potential;

- the Council has maintained its level of spending on its outsourced leisure and cultural services whilst during the same period reduced its expenditure on other services;
- the Trust is responding positively to Council concerns on its governance and financial management, but the Council's concerns remain;
- the Council has not used its governance arrangements effectively to provide appropriate oversight of the Trust; and
- the Council needs to learn from outsourcing its leisure and cultural services to help inform any future contracts and alternative delivery models.

8 We are concerned about the medium-term viability of the current provision of leisure services. We will continue to monitor the position and the Council's response to our proposals for improvement.

## Proposals for improvement

### Exhibit 1: proposals for improvement

The table below sets out the proposals for improvement that we have identified following this review.

Proposals for improvement	
P1	The Council should act quickly to agree its outcome focussed vision for Leisure and Cultural Services. This should then shape how its leisure and cultural services will be delivered.
P2	The Council should review its working arrangements with the Trust and agree contract amendments that will enable them to manage the leisure services whilst achieving the Council's outcome focussed vision for leisure and cultural services.
P3	The Council should assure itself that the current delivery model is both affordable for the Council and the best model for residents and visitors to Merthyr Tydfil.
P4	The Council needs to use its governance arrangements effectively so that it has appropriate oversight on the delivery of the contract. This includes providing members with appropriate information about the delivery of leisure and cultural services
P5	The Council needs to urgently address our previous Proposal for Improvement for Cabinet to publish a Forward Work programme.
P6	The Council should undertake a formal review of how it develops and manages contracts, to ensure that its arrangements deliver the intended vision in an efficient and effective way to the benefit of its residents, the Council and delivery partners.

# Detailed report

**Outsourcing the Council's leisure and cultural services has protected the services from cuts, but services lack strategic direction, are restricted by the current contract and require more effective oversight**

**The Council does not yet have an approved vision and strategy for its leisure and cultural services**

- 9 We understand that the Council had been exploring alternative delivery models for its leisure services for about two years before it made the decision in July 2014 to set up the Leisure Trust. However, Council officers informed us that the heritage and cultural assets were added to the business case at a very late stage in the development of the contract. This did not allow enough time for a thorough due diligence exercise to be undertaken.
- 10 The business case approved by the Council in July 2014 set out six priority outcomes in establishing a new non-profit distributing organisation (NPDO) to deliver leisure and cultural services (para. 1.16). These were:
  - People in Merthyr Tydfil have the opportunity and aspiration to learn and develop their skills to maximise their potential
  - People in Merthyr Tydfil benefit from a strong, sustainable and diverse economy
  - People, who live and work in Merthyr Tydfil are supported to enjoy a healthier and better quality of life
  - People enjoy a vibrant, attractive, safe and sustainable place in which to live, work, play and visit
  - Cost Effective Delivery – through improved commercial approach to deliver revenue savings and a reducing management fee
  - A sustainable financial plan leading to investment in the service and facilities
- 11 Paragraph 1.17 of the Business Case stated that it would be for the Council to use these outcomes to develop the NPDO.
- 12 However, the Council does not have an approved clear vision for its leisure and cultural services to inform what it wants from its leisure and cultural services. In 2018, Council officers produced a draft vision for Leisure, Culture and Sports Development. This draft is still developing, and the intention is for elected members to receive a final draft for consideration later in 2019. Whilst the Council has a Well-being Objective for living well in Merthyr Tydfil: 'People are empowered to live independently within their communities, where they are safe and enjoy good

physical and mental health', the Council does not have a vision for its Sports and Cultural services to show how it will support this Well-being Objective.

- 13 The Trust is ensuring that its priorities within its five-year business plan link to the Council's six priority outcomes and the national well-being goals of the Well-Being of Future Generations (Wales) Act 2015 (WFG)<sup>1</sup>.

#### Exhibit 2: proposal for improvement

##### Proposal for improvement

- |    |   |
|----|---|
| P1 | The Council should agree its outcome focussed vision for Leisure and Cultural Services. This should then shape how leisure and cultural services will be delivered. |
|----|---|

## The Council has good arrangements to monitor the delivery of the leisure and cultural services contract, but both the Council and the Trust recognise that elements of the contract itself are restricting the Trust from achieving its potential

- 14 Contract management meetings between the Council and Trust with set agendas and meeting notes take place every three months. The Trust reports performance to Council officers within 21 days after each quarter with the contract management meetings held within two weeks of the Council receiving this report. The Council and Trust are also reinstating monthly meetings with the Trust's finance manager and since 2018, the Trust provides the Council with monthly financial performance reports. These arrangements allow the Trust and Council the opportunity to discuss any emerging issues in a timely manner.
- 15 The Council's contract with the Trust is for 20 years, ending in March 2035. The 2014 business case recommended a five-year review of the funding and approach. There is provision within the contract (cl 6.18) for annual review of the Agreement to establish whether the Council requires to vary services or the contract management fee. There is no break clause, but there are provisions for variation or termination, although any variation must not place the Trust in a better/worse position than prior to the change. Termination provisions provide limited ability to end the contract agreement early.
- 16 Senior Council officers led on writing the contract. The people we spoke to during our review recognised that these officers had limited private sector and commercial experience resulting in a contract written to support a Council-led service rather

<sup>1</sup> <https://www.merthyr.gov.uk/media/2695/guide-to-the-wfgact-en.pdf>

than to support a commercial operator. The Leisure Trust was given the opportunity to comment during the development of the contract.

- 17 One of the intended benefits of creating a Trust was for the Trust to be more cost effective in the delivery of leisure services by developing an improved commercial approach to delivering revenue savings and by reducing the management fee. However, the Council has been concerned that the Trust has not been operating effectively as a commercial entity. When the Trust was set up, a range of staff were transferred from the Council to the Trust's employment. These staff were not trained or upskilled to work in a commercial environment. The Council could have been more proactive and foreseen that there was a need to upskill these staff. The Council needs to consider how it can do this in any alternative delivery models it considers for any of its services in the future.
- 18 The contract requires the Trust to report back to the Council on a suite of indicators that are not outcome focused but which comprises of over 100 operational performance indicators. All interviewees agreed that these indicators are overly prescriptive.
- 19 The Council retained control over the core pricing and programming of leisure services. Our review has found the Council control over pricing has caused delays and the representatives from the Trust that we interviewed felt that this has limited the Trust's ability to respond to the needs of its customers and the commercial environment.
- 20 In early December 2018, the Trust submitted a request to the Council to change their fees and charges in readiness for January 2019. However, the Trust gave the Council limited time to consider these changes and request further information from the Trust to understand the rationale for the proposed changes. The Council's analysis of the proposed changes raised concerns that the increased prices may mean that many of the residents from the most deprived areas of the Borough would be excluded from accessing some facilities and services of the Leisure Trust based on cost. In response, the Trust reduced the proposed increase in prices.
- 21 The Council acknowledges that the current contract is restrictive. However, to date, the Council has not taken any action to review the terms of the contract and still expects the Trust to operate within the confines of the contract.

### Exhibit 3: proposal for improvement

#### Proposal for improvement

- P2 The Council should review its working arrangements with the Trust and agree contract amendments that will enable the Trust to manage the leisure services whilst achieving the Council's outcome focussed vision for leisure and cultural services.

## The Council has maintained its level of spending on its outsourced leisure and cultural services whilst during the same period reduced its expenditure on other services

- 22 The 2014 business case states that the Trust's management fee of £2.5 million per year would reduce over time. The business case was clear that the management fee would remain static for the first five years. However, the business case was not clear on when the Council expected to reduce the management fee to the Trust after the fifth year. Any future reduction in the management fee needs negotiating with the Trust through the appropriate change of control notice as stated within the contract.
- 23 In 2016-17, there was a one-off £15,000 reduction in the management fee, but aside from this small reduction, the management fee has remained the same for the first five years of the Trust's operation as per the business case. The Council has adhered to the 2014 business case while the Council is reducing the budgets of other Council services.
- 24 There are no planned reductions in the management fee for 2019-20 and no Leisure Trust savings have been included within the Council's Medium Term Financial Plan despite the Council having reduced its overall revenue net expenditure on services by one per cent in 2017-18 since 2014-15<sup>2</sup>; having a £8.2 million funding gap for 2020-21; and a cumulative budget deficit of £15 million over the next four years. The Council has, therefore, effectively protected leisure and cultural services from the reductions in funding that have been applied to its other services.
- 25 The outsourcing of leisure services to the Trust generated the expected £600,000 saving to the Council, mainly due to reduced pension contributions and National Non-Domestic Rates.
- 26 The 2014 business case projected a profit for the Trust. However, whilst the Trust achieved a surplus in the first year of trading, in all subsequent years, it has operated in deficit. The Trust is projecting a very small financial surplus in 2019-20. The Trust has developed a Business Strategy 2019-24 with a supporting one-year delivery plan, but the Leisure Trust's financial situation remains a significant concern to the Council. The Council needs to work constructively with the Trust to consider whether and how it can sustain its leisure and cultural services in the County Borough for the benefit of its citizens. Alternatively, it needs to explore other options for the delivery of its leisure services. As part of this, as we set out in paragraphs 7 to 11, it is important the Council is clear what it wants for its leisure services.

<sup>2</sup> Welsh Government, StatsWales, Total Net Revenue Expenditure on services

#### Exhibit 4: proposal for improvement

##### Proposal for improvement

- P3 The Council should assure itself that the current delivery model is both affordable for the Council and the best model for residents and visitors to Merthyr Tydfil.

## The Trust is responding positively to Council concerns on its governance and financial management, but the Council's concerns remain

- 27 The Council has had concerns about the Trust's ability to adhere to the contract. It has written to the Trust raising these concerns. In April 2017, the Council was considering terminating the contract but, in June 2017, it decided against doing this as it felt that the Trust had responded promptly to the Council's concerns and was working constructively with the Council. However, the Trust continued to fall short of Council expectations and requirements of the contract.
- 28 The Council's Internal Audit team has an active role in seeking assurance that the Trust's internal controls, governance arrangements and financial management are satisfactory. In April 2018, Internal Audit conducted a review resulting in a report with 60 recommendations for improvement. Whilst Internal Audit found that the control environment in the different leisure and cultural venues was generally satisfactory with some exceptions, the main areas of concern related to the governance and financial management of the Trust overall. The report prompted the Council once again to write to the Trust raising concerns that the Trust was still not performing as expected or required.
- 29 The Trust responded positively to the Internal Audit report. In April 2018, the Trust Board engaged the services of a Leisure consultant experienced in managing a Leisure Trust. This consultant conducted strategic, operational and financial reviews of the Trust. The Trust Board received the outcome of this review in May 2018. The consultant made approximately 30 recommendations for the Board's consideration. This review gave the Board the starting point to plan strategically and strengthened financial and operational arrangements.
- 30 In October 2018, the Council's Audit Committee received an update on the Trust's progress in addressing the 60 Internal Audit recommendations. At this time, the Trust had implemented 44 of the recommendations, was in the process of implementing a further eight and action was required for three recommendations. The Council was required to address four recommendations and one was no longer applicable.

- 31 The Trust's latest Annual Report and Financial Statements<sup>3</sup> for the year ended 31 March 2018 acknowledge the financial, governance and work practice issues and the actions the Trust is taking to try to address these. The Trust's financial statements for the year show an operating deficit and a reserves deficit.
- 32 Since the creation of the Trust in April 2015, the Trust has had two Chief Executive Officers and then, for a time, did not have a Chief Executive Officer at all. In August 2018, the Trust appointed a new interim Trust Chief Executive officer on a temporary contract (this officer completed the independent review of the Trust in April and May 2018). This interim Chief Executive Officer is bringing enthusiasm, industry expertise and a change of approach to the Trust. However, at the time of our fieldwork, the interim Chief Executive Officer's contract was due to expire.
- 33 Since 2018, the Trust has been contracting its finance management service from a private firm. We were told by multiple interviewees that the experience and knowledge of both the contracted finance manager and the Interim Chief Executive Officer have resulted in improvements in the production and availability of the Trust's financial information. The improved systems and arrangements are giving the Council and the Board of Trustees confidence that the leadership and management of the Trust are improving.
- 34 Since the Trust's creation, the Council and Trust relationship has experienced periods of tension as well as positivity. Currently the relationship is clearly strained as the Council continues to be concerned about the financial position of the Trust.

## The Council has not used its governance arrangements effectively to provide appropriate oversight on the delivery of the leisure and cultural services contract

- 35 The Trust is the appointed agent to deliver the leisure and cultural services of the Council as set out in the contract. The Trust has attended the Governance, Performance, Business Change and Corporate Services scrutiny committee to provide performance updates. However, we have found that the Council does not provide covering or introductory reports to provide any context, such as reminding members of the intended outcomes of the outsourcing of leisure and cultural services to a Trust. This would have enabled elected members to understand and challenge the position of the Trust more effectively.
- 36 In 2018, the Governance, Performance, Business Change and Corporate Services scrutiny committee received two verbal updates from Council officers on the Trust's performance. Members did not receive information in advance. Members, therefore, had no time to consider information and prepare questions, thereby

<sup>3</sup>

<https://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/CharityWithPartB.aspx?RegisteredCharityNumber=1160964&SubsidiaryNumber=0>

potentially limiting the effectiveness of scrutiny. This practice of verbal updates is not transparent as it does not indicate in advance the specific nature of the item, the source of any relevant information or any applicable recommendations that will be considered. Neither does it allow, for example, for legal or financial commentary on the items to be discussed.

- 37 We were told that the Council's own legal advice was that elected members can only hold Council officers to account and not the Trust. However, in other Welsh councils in which Leisure Trusts deliver and manage leisure services, Trust representatives attend scrutiny committees to respond to member questions on performance, albeit on occasions performance information is contained in exempt reports. This presents elected members with the opportunity to scrutinise the spending of public money to ensure the Council and the public are receiving value for money and delivering against agreed performance and financial measures.
- 38 The Governance, Performance, Business Change and Corporate Services scrutiny committee is keen to effectively plan its agenda items and to evaluate the delivery of leisure and cultural services. The effectiveness of the future scrutiny work programme can be enhanced if it considers the work programme of Cabinet. However, as Cabinet do not have a published forward work programme, this alignment of Cabinet and Scrutiny is not possible. We have issued a proposal for improvement on this previously in our 'Good governance when determining service changes' report<sup>4</sup>, issued to the Council in February 2017. In October 2018, we issued our 'Overview and Scrutiny: Fit for the Future?' report<sup>5</sup> and reported that this proposal for improvement remained applicable.

**Exhibit 5: proposals for improvement**

Proposal for improvement	
P4	The Council needs to use its governance arrangements effectively so that it has appropriate oversight on the delivery of the contract. This includes providing members with appropriate information about the delivery of leisure and cultural services.
P5	The Council needs to urgently address our previous Proposal for Improvement for Cabinet to publish a Forward Work programme.

<sup>4</sup> [http://www.audit.wales/system/files/publications/merthyr\\_council\\_good\\_governance\\_english.pdf](http://www.audit.wales/system/files/publications/merthyr_council_good_governance_english.pdf)

<sup>5</sup> <http://www.audit.wales/publication/merthyr-tydfil-county-borough-council-overview-and-scrutiny-fit-future>

## The Council needs to learn from outsourcing its leisure and cultural services to help inform any future contracts and alternative delivery models

- 39 The Council is leading an ambitious redevelopment of Merthyr Tydfil's heritage assets to make those assets into a heritage portfolio worthy of international acclaim. The development project is known collectively as the Crucible Development. It includes Cyfarthfa Castle, heritage sites in Merthyr town centre and extensive landscaping both east and west of the River Taff. The value of this redevelopment is estimated at £50 million over a 10-to-15-year programme. On 21 October 2017, the Council and Leisure Trust co-hosted a one-day public meeting/workshop, known as a 'Charette' to gather thoughts and inspirations for the project.
- 40 The Council is the driving force in the £50 million Crucible development. Fundamental to the success of the Crucible Development, is that the Council's own procedures and processes deliver efficient and effective contracts with suitable contract management arrangements. It is particularly important that the Council learns from its outsourcing of its leisure and cultural services to inform the development of future contract management arrangements.
- 41 During our fieldwork, interviewees identified lessons from the outsourcing of the Council's leisure and culture services, the current contract and supporting contract management arrangements, which have been summarised to include:
- a. at the outset, the Council to have a clearly articulated vision for the service to be outsourced.
  - b. the need for a robust contract at the outset of outsourcing any Council service with a focus upon intended outcomes rather than operational performance indicators.
  - c. any long-term contract to include a clause to periodically pause and review the contract.
  - d. when developing the contract, to ensure that the Council is represented by an officer(s) who will not transfer to the delivery organisation.
  - e. the scope of the contract should be set at the outset of development. Significant additions to the contract, particularly towards the end of the contract development should either be resisted or the deadline for contract development be extended.
  - f. enough time should be allowed for the development of the contract to allow for a robust due diligence exercise to be undertaken from a Council perspective. The due diligence should be undertaken by a team that has not been involved in the development of the contract.
  - g. at the outset of any contract, ensuring the right people are in the right roles with the right skills to deliver the contract requirements and the service that is outsourced.

- h. any staff subject to TUPE to be upskilled if transferring to a commercial business;
  - i. to minimise the risk of a conflict of interests, any staff subject to TUPE not to be leading on developing the contract;
  - j. any staff subject to TUPE to be informed of the intended outcomes of the contract prior to transfer;
  - k. if outsourcing a Council service to a commercial entity, undergo external recruitment to appoint a Managing Director/Chief Executive officer with relevant expertise and knowledge of the commercial sector; and
  - l. the governance arrangements for the new organisation and how it will be held to account by the Council need to be explicit within the contract terms.
- 42 The Council would benefit from doing a formal review of the processes and outcomes of outsourcing of leisure and culture to learn from these arrangements. This review could then usefully inform arrangements for any future alternative delivery models and contracts, such as the Crucible Development.

**Exhibit 6: proposal for improvement**

<b>Proposal for improvement</b>	
P6	The Council should undertake a formal review of how it develops and manages contracts, to ensure that its arrangements deliver the intended vision in an efficient and effective way to the benefit of its residents, the Council and delivery partners.



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