
Report To:	Policy & Resources Committee	Date:	24 March 2015
Report By:	Chief Financial Officer	Report No:	FIN/21/15/AP/CM
Contact Officer:	Alan Puckrin	Contact No:	01475 712333
Subject:	Scottish Charity Regulator Report – Arm’s Length External Organisations		

1.0 PURPOSE

- 1.1 The purpose of this report is to highlight a recent paper issued by the Scottish Charity Regulator (OSCR) regarding a study they had carried out in respect of Arm’s Length External Organisations (ALEOs) and to seek Committee approval for the proposed Action Plan.

2.0 SUMMARY

- 2.1 A recurring theme within Audit Plans throughout Scotland in recent years has been governance of Arm’s Length External Organisations. This issue also appears in the Council’s External Audit Plan for the forthcoming year.
- 2.2 The Council has been operating an External Governance reporting framework for over three years and this has been recognised as good practice by the Council’s External Auditor however the OSCR Report does raise some important issues which Officers should test against current practice in relation to the Councils two ALEOs.
- 2.3 Lack of clarity exists as to the definition of an ALEO as OSCR have categorised Inverclyde Community Development Trust as a Council ALEO; this view is not shared by either Officers or the Council’s External Auditors and has been intimated to OSCR. A Council response to a recent Government enquiry regarding the number of ALEOs within Inverclyde has highlighted this issue and recommended that a standard definition of an ALEO be confirmed by the Scottish Government to avoid confusion amongst Auditors, OSCR and Councils.
- 2.4 None of the Inverclyde ALEOs were selected for more in depth investigation and paragraph 3.3 of the OSCR Report on page 12 highlights the selection criteria. In the case of both Inverclyde Leisure and Riverside Inverclyde, Officers are confident that adherence to these requirements could readily be demonstrated.
- 2.5 The OSCR report contains a number of questions/recommendations and these have been encapsulated in Appendix 1 with a current position statement for each of the Councils two ALEOs. Whilst there are no major concerns to be highlighted to the Corporate Management Team there are three areas where action could be taken to update documentation and further strengthen the demonstration of independence and governance.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee note the contents of the report by the OSCR.

- 3.2 It is recommended that the Committee consider the contents of Appendix 1 and approve the proposed actions.

Alan Puckrin
Chief Financial Officer

4.0 BACKGROUND

- 4.1 The Council has two ALEOs, namely Inverclyde Leisure and Riverside Inverclyde. The Council is the sole member of Inverclyde Leisure whilst there are two members of Riverside Inverclyde.
- 4.2 ALEOs are under increased scrutiny at a national level and national reports on this area have been issued by Audit Scotland and then followed up by local External Auditors.
- 4.3 The Council has been held up as an example of good practice in respect of its approach to the Governance of External Organisations which includes the Council's two ALEOs. This process looks at a wide number of indicators including the quality of service delivery, robustness of governance arrangements and the overall financial strength of the organisation. The Council is now entering into its fourth year of the operation of this process.
- 4.4 The recently approved 2014/15 External Audit Plan highlighted that there would be ongoing work in respect of the review of both Riverside Inverclyde and Inverclyde Leisure.

5.0 OSCR REPORT

- 5.1 The OSCR Report is attached as Appendix 2.
- 5.2 The report studied 64 Local Authority organisations which OSCR categorised as being ALEOs. It should be noted that there is clearly an issue of the definition of the ALEOs as OSCR have categorised Inverclyde Community Development Trust as an ALEO and this is not accepted by either Officers or the Council External Auditors.
- 5.3 Thereafter OSCR carried out a desk top exercise looking at various pieces of information including Annual Accounts and reports prior to selecting a further 11 organisation which displayed higher risk factors for more detailed investigation. It should be noted that none of the "ALEOs" within Inverclyde were selected for this study and that is a positive sign.
- 5.4 There is pressure coming from the Charitable Sector to question the charitable status of ALEOs and whether there is an "level playfield" between ALEOs and "real" Charities. This is likely to be an area of scrutiny and challenge and as such it is important that the Council continues to demonstrate robust governance.
- 5.5 The report thereafter highlights any issues arising and poses some questions/recommendations to be considered. The bulk of the issues raised by OSCR are in relation to the governance of ALEOs and particularly in respect of Councillor Trustees and Local Authority control/scrutiny.
- 5.6 Appendix 1 captures the issues raised by OSCR and contains an initial assessment in respect of both Inverclyde Leisure and Riverside Inverclyde against the matters raised. This highlights there are potentially three areas which could further strengthen the Council's approach to governance of its ALEOs.

6.0 IMPLICATIONS

Finance

- 6.1 There are no financial implications arising from this report.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
N/A					

Legal

- 6.2 There is increasing external scrutiny of the operation of and, indeed, the expectation of ALEOs and it is a requirement of the Council's good governance to ensure there are proper reviews of purpose, membership and performance in relation to Council participation and involvement.

Human Resources

- 6.3 There are no HR implications arising from this report.

Equalities

- 6.4 There are no equalities implications arising from this report.

Repopulation

- 6.5 There are no direct repopulation arising from this report.

7.0 CONSULTATIONS

- 7.1 This report has been prepared in consultation with the Head of Legal and Property Services and the Corporate Director Environment Regeneration & Resources and Head of Safer & Inclusive Communities and has been endorsed by the Corporate Management Team.

8.0 LIST OF BACKGROUND PAPERS

- 8.1 None.

OSCR – ALEOs Report

<u>Report Recommendations</u>	<u>IL Position</u>	<u>ri Position</u>	<u>Action Proposed</u>
1/ Where a sole member structure exists then a memorandum of understanding setting out the rationale is required	Not Applicable	Not Applicable	If it is confirmed that IL is a sole member organisation then their rationale will be documented.
2/ Councillor Trustees should undergo a robust induction process so that they fully understand their duties	IL provide induction training to all Directors via the company's solicitors.	All trustees undergo formal induction process via Board Induction Pack and meetings with Chair/CEO and separately with Enterprise and Governance Team Leader.	No action proposed.
3/ Trustee Boards should contain an appropriate mix of skills. Charities should consider how Councillor Trustees are selected and apply a skills matrix as they would with Independent Trustees	IL board consists 11 Trustees of which 5 are Councillors nominated by the Council, 2 employee representatives, 1 TU representative, 1 Sports Inverclyde nominee and 2 co-opted members chosen from the business and local communities.	The ri Board comprises partner directors (three of whom are appointed by Inverclyde Council) and co-opted directors who are proposed by the Nominations Committee to ensure a balanced and appropriately qualified and experienced Board.	The composition of the IL Board has not been reviewed since inception. It is proposed that the Client Officer recommend to IL that a skills matrix is required plus an Equalities Audit and that a Board Development Programme is proposed.

<u>Report Recommendations</u>	<u>IL Position</u>	<u>ri Position</u>	<u>Action Proposed</u>
<p>4/ As an ALEO develops it needs to ensure that the ALEO Board and its objects remain fit for purpose.</p>	<p>IL has recently refreshed its Business Planning model which has been approved by the Council. This document sets out the objectives of the ALEO and provides a clear plan for future development and review.</p>	<p>Objects most recently reviewed with OSCAR in latter half of 2014 and proposed modifications to the objects were agreed by OSCAR, the member organisations and ri Board in February 2015.</p>	<p>IL Objects have not been reviewed (since 2001?). Would be appropriate to refresh these, along with the Memo and Articles of Association.</p>
<p>5/ Where a Councillor sits on scrutiny or finance Committees within a Local Authority it is recommended that they should not be the same Committee which deals with the ALEO they act on</p>	<p>The convenor and vice convenor of Education and Communities and the vice-convenor of P&R are Trustees. The vice convenor of Education and Communities is the vice chair of the IL Board. Other trustees are members of Education and Communities and/ or P&R. Members declare and interest as IL Trustees.</p>	<p>Due to the limited number of Council representatives on ri's Board Council Directors do sit on same scrutiny and finance Committees but are required to declare an interest.</p>	<p>Real challenges exist delivering this given the size of the Council and current Committee Structure. Proposal is to continue at present with declaration of interest backed up by regular training.</p>
<p>6/ Where the size of a Charity and its board allows then Sub-Committees headed by Independent Trustees should be utilised in order to improve assurance.</p>	<p>There are no standing sub-committees. There is an ad-hoc sub-committee dealing with HR and recruitment issues as necessary.</p>	<p>ri operates two sub-committees (Operations, Finance & Governance Committee, which is chaired by private sector trustee. and Nominations Committee, which has an independent chair).</p>	<p>No action proposed.</p>



Arms Length External Organisations

Executive Summary

An ALEO is an Arm's Length External Organisation – a body which is formally separate from a local authority but subject to its control and influence. ALEOs can register as charities if they have charitable purposes and undertake activities in furtherance of these purposes.

The Office of the Scottish Charity Regulator (OSCR) has undertaken a detailed review into the ALEOs which are registered as charities in Scotland. This involved desk based work and then further detailed analysis of a sample of 11 charities. The sample was selected based on indicators of risk within these charities. Previous inquiry cases show that there are risks attached when charities operate within the control of another body. There is the potential that trustees' decisions are inhibited by the other party and therefore that they cannot act in the interests of the charity. We therefore looked particularly at the charities where there was the potential for greater control by the Local Authority.

The key findings were:

- There are **64 ALEOs registered as charities in Scotland**. These vary in their size, structure and type of activity. The smallest has an income of £15,000 with the largest over £110 million. The majority operate leisure and culture trusts, but they are also used to undertake activities such as community safety, employability and regeneration.
- **Ten of the 11 ALEOs reviewed were governed adequately** with well managed boards consisting of people with a range of skills.
- **One of the 11 had issues** around governance and charitable purposes and we are working with this charity further.
- ALEOs **work in partnership with the local authority** to provide services. Funding agreements ensure that funds are monitored, but there is flexibility to negotiate the amount of funds and how funds are used.
- Independent trustees are appointed to ALEOs based on **their skills and suitability** for the role. This selection process is not consistently applied to Councillor Trustees and this could be improved. Trustees receive training for their roles and in many cases there are robust induction procedures.
- Although the structure allows it, control is not routinely exercised by the local authority – in general the charities are operating with **sufficient independence**. Where the local authority has exercised powers, this has been in exceptional circumstances.
- There are areas where **improvements** can be made within the governance of these charities and consequently we have made a number of **recommendations**.

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1 ■ Introduction

1.1 The story up to now

An ALEO is an Arm's Length External Organisation. This is an organisation which is formally separate from a local authority but subject to its control and influence. ALEOs mainly undertake activities which were previously undertaken by local authorities. ALEOs are constituted in a number of different ways and 64 Scottish ALEOs have charitable status.

All bodies which are registered as charities must comply with the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). This sets out requirements for charities and also for their trustees. As charity regulator we are required to 'encourage, facilitate and monitor compliance with the provisions of this Act'. As part of this regulatory remit we must review individual charities in order to ensure that each charity's entry in the Scottish Charity Register (the Register) remains accurate.

1.2 Why do these bodies have charitable status?

In order to enter an ALEO on the Register it must meet the charity test. In terms of the 2005 Act a body meets the charity test if:

- (a) its purposes consist only of one or more of the charitable purposes, and
- (b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.

In some situations a body is prevented from being a charity even though it appears to have charitable purposes and provide public benefit. This is the case if:

- (i) the body's constitution permits distribution or use of its property for a purpose which is not charitable
- (ii) the body's constitution expressly permits Ministers to direct or otherwise control its activities
- (iii) the body is a political party or one of its purposes is to advance a political party.

The Charities and Trustee (Investment) Scotland Bill as introduced to Parliament excluded from charitable status in Scotland any organisation whose constitution expressly permitted a third party to direct or control its activities. This proved to be a controversial provision and was amended and narrowed in the 2005 Act as passed to exclude any body that has Scottish or UK ministerial power of direction in its constitution. Most relevantly here, this means that there is nothing to prevent an organisation whose constitution allows a local authority to control it from being a charity. Where an ALEO meets the charity test, OSCR must enter this body in the Register.

1.3 Why are we interested?

- Although there are relatively few ALEOs on the Register - **64 out of 23,500 charities** in total - they have a significant income level. The 64 ALEOs in 2013 had an **income of over £550 million** which is 3% of the total income of £21 billion that charities in Scotland reported for their 2013 financial year end.
- We have received some concerns around how ALEOs operate. We undertook inquiries into Glasgow East Regeneration Agency and Shetland Charitable Trust and found that the level of control and influence exerted by local authorities in these charities had led to governance issues. We have also seen recent cases where the local authority has intervened in the running of charities set up as ALEOs.
- There has been interest in charitable ALEOs from the wider charity sector. There are concerns about the appropriateness of charitable status for ALEOs and about the role of ALEOs in attracting funding that would otherwise go to other voluntary bodies.
- The 2005 Act requires trustees who are appointed by another body to be able to put the interests of the charity before that body, or if they cannot, to withdraw from discussions. ALEOs have trustees appointed by the local authority, and as such there is a risk that this requirement is breached.
- We have commented on the structure of ALEOs in the past, particularly when issuing our 'Who's in Charge Guidance', which considered the complex relationships charities may have with local authorities. This guidance considered potential risks which may materialise through certain ALEO structures and made recommendations based on these. A more focused piece of work was required to see if these risks had materialised and if our recommendations are still valid.

2. Inquiry cases

As Regulator, we carry out inquiry work which stems from internal intelligence and also concerns which we receive from external sources. This inquiry work also informs us of potential themes and risks within groups of charities.

In considering the ALEO review we considered some of the casework we have undertaken in connection with ALEO bodies in the past.

2.1 Shetland Charitable Trust - SC027025

Within our early years as Regulator and following concerns from members of the public we made inquiries into Shetland Charitable Trust, a sizeable charity in Shetland which was at that point closely linked to Shetland Islands Council.

A review of the charity showed that the Trust's governance model presented a high risk of both systemic and specific conflicts of interest through the relationships with the local authority which impacted on effective and appropriate monitoring of the Trust. We therefore asked the charity trustees to consider their governance arrangements and to take steps towards operational independence. In June 2013 the charity trustees undertook a fundamental restructuring of the charity's constitution which allowed them to make the necessary changes to operate as an independent charity. We monitored the charity until the position was satisfactorily resolved.

2.2 Glasgow East Regeneration Agency Limited - SC021112 (GERA)

This case came to our attention through a concern from a member of the public and also through general press interest. The concern centred on a pension enhancing payment which had been made to the charity's outgoing chief executive as part of his severance package.

The charity had been one of five local regeneration agencies set up by Glasgow City Council and Scottish Enterprise Glasgow. In 2011 these five organisations merged into one Glasgow-wide organisation called Glasgow's Regeneration Agency.

On the wind up of Glasgow East Regeneration Agency, the chief executive was made redundant and consequently a severance package was devised. From the contract of employment it was clear that the Chief Executive was entitled to receive statutory redundancy monies and an element of his pension to which he had contributed.

In addition to the amount he was legally entitled to receive, the charity trustees also provided him with a further £232,708. This payment was made on the basis that it would put the package on a par with that received by Glasgow City Council employees who had also recently been made redundant.

We found the decision to provide the additional discretionary payment to be misconduct by the trustees. There was no requirement to pay this amount and £232,708 of charitable funds were diverted for a non charitable purpose as a result.

One of the elected members on the board of trustees had advocated the payment of this discretionary amount. This had arisen due to his knowledge of the payment which similar employees in Glasgow City Council had received. He had therefore used his knowledge as an elected member rather than considering the position within the charitable sector and the requirements of charity law. No professional advice had been sought.

This case also highlighted that although the charity had eight trustees, only five of these attended the meeting when it was decided to augment the pension. From the information provided, none of the three trustees who sent apologies for not attending the meeting appears to have read the meeting papers sent to them. In this case, although there were independent trustees (those not connected with the local authority), they did not exercise sufficient care to prevent this decision being made.

2.3 Issues arising

The key issues which have arisen in the inquiry cases have been around charity governance. Within Shetland Charitable Trust there was no clear distinction between the running of the charity and the usual local authority business. The lack of independent thought and decision making within GERA allowed there to be decisions to the detriment of the charity with significant charitable funds lost.

There have also been changes to the constitutional models for charitable ALEOs. Recent new ALEOs have been set up with the local authority being sole member. There have also been changes made to some existing constitutions to reflect this model.

Where a single body is sole member there is increased risk that this body can control and direct the activities of the charity and, as such, threaten the ability of the trustee board to act independently.

3. Analysis work undertaken

The main body of the work we carried out was in four areas:

3.1 Desk-based review

The initial stages of the work consisted of an extensive desk-based review.

Once we had identified the ALEOs to review (Listed in Appendix 1) we gathered data from these charities through a review of the accounts and governing documents.

The review of constitutions allowed us an understanding of the governance structure of these charities. We looked in particular at the membership of the charity, the methods for appointment and removal of trustees, and any clauses in relation to conflict of interest.

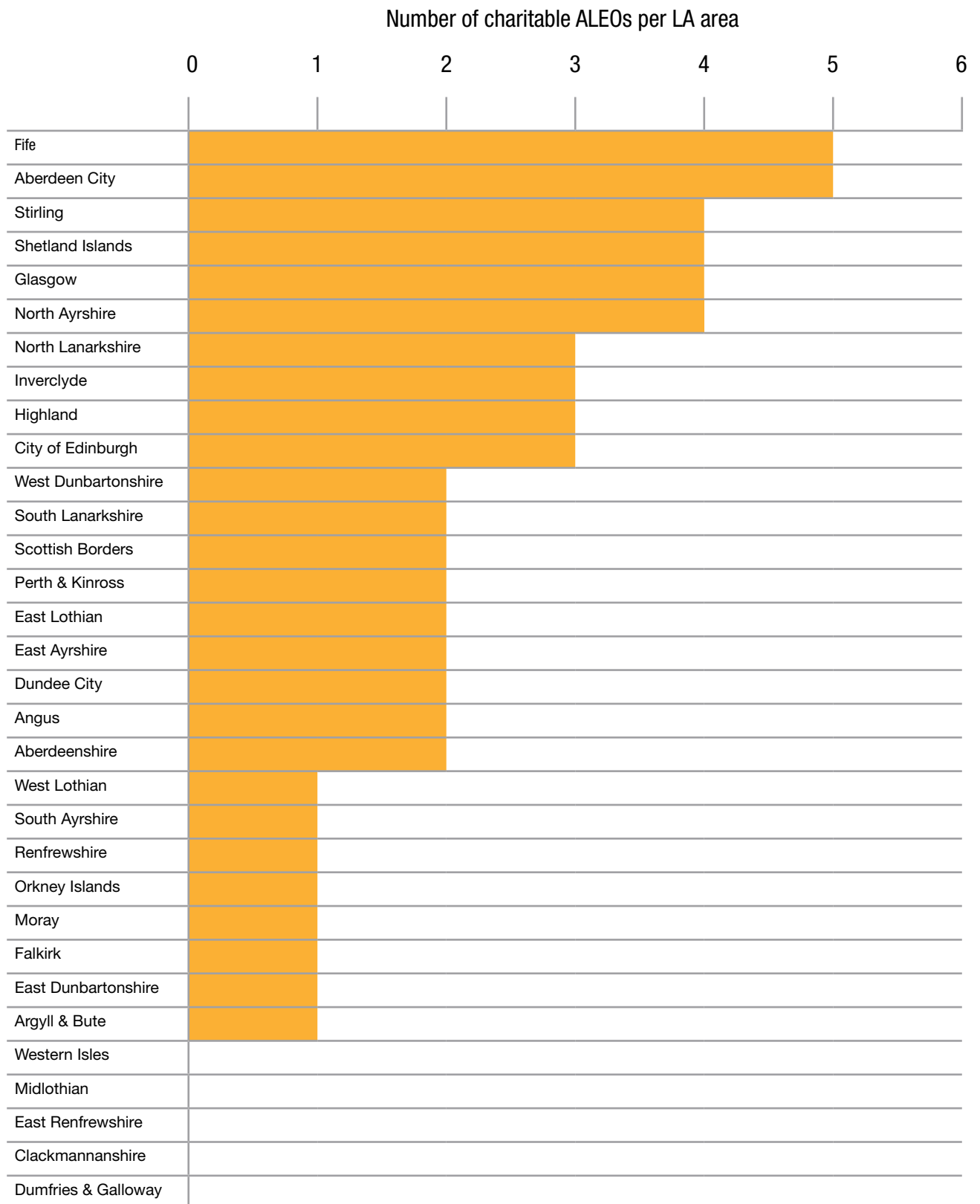
We collated information from the accounts and annual returns submitted for the year ended 31 March 2013, including details of the professional advisors to the charity, the group structure and other information such as pension arrangements and different sources of income received.

3.2 ALEOs on the Register

Facts and figures

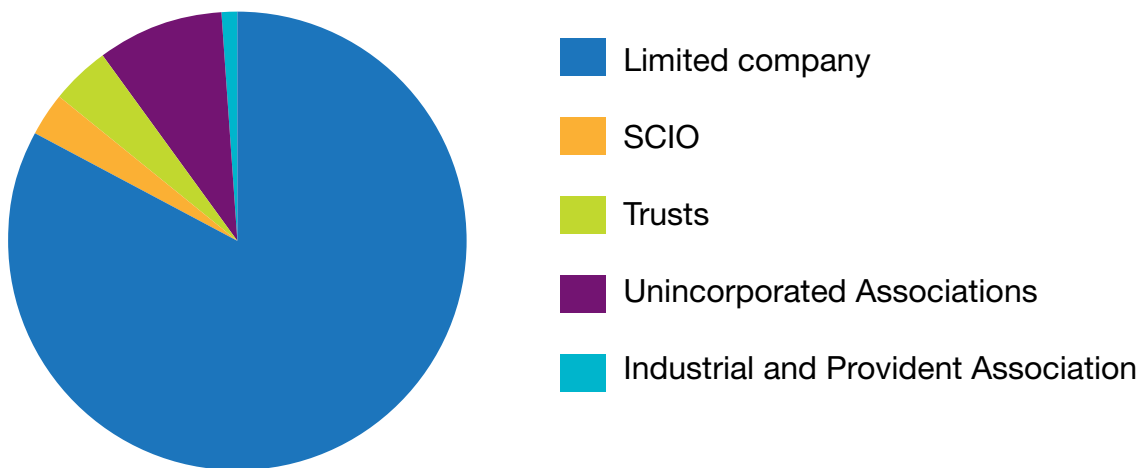
There are 32 local authorities in Scotland, many of which have decided to set up ALEOs to undertake some of their activities. Not all of these ALEOs are registered as charities; many operate as a separate legal entity for other reasons than charitable status. Out of the 32 local authorities there are 27 which have charitable ALEOs.

The local authorities with the most charitable ALEOs are Fife Council and Aberdeen City Council. However the majority of income from charitable ALEOs stems from those connected with Glasgow City Council. This is represented in the graphs below.



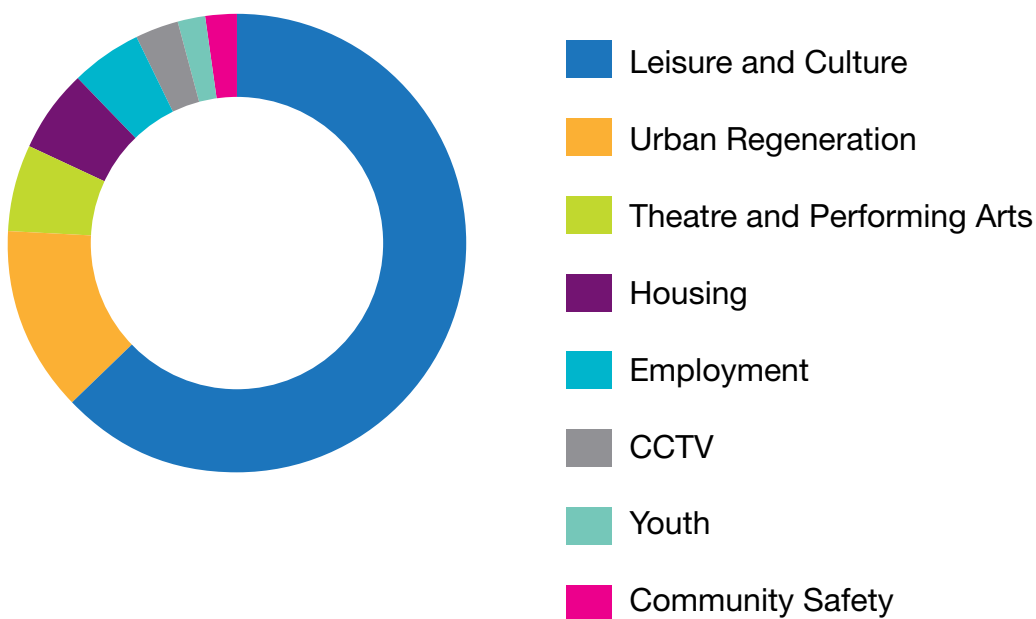


Charitable ALEOs per constitutional form



As seen above ALEOs are in the main constituted as companies limited by guarantee but there are a small number of other constitutional forms.

Charitable ALEOs by activity



ALEOs are set up to undertake a number of services and this variety is reflected throughout those in the charitable sector, although as can be seen above the majority are leisure and culture services.

3.3 Identifying sample

Our desk-based work provided us with a useful overview of the ALEOs on our Register. However, in order to understand more about these bodies we decided to undertake a more detailed review on a smaller sample of ALEOs.

Our work had determined three main risk areas which were:

- Control over the charity by a third party
- Lack of adequate trustee board
- Non charitable activities.

We included ALEOs within our sample which had indicators that these factors might be present, and also which covered a broad range of activities and local authorities. The final sample comprised 11 ALEOs as shown in the table below.

Charity name	Charity number	Date registered	Activities
Capital City Partnership	SC031026	05/02/1999	Employability
Community Safety Glasgow	SC017889	19/03/1991	CCTV, community safety and rehabilitation
East Dunbartonshire Leisure and Culture Trust	SC041942	08/12/2010	Sports, leisure and culture
Fife Sports and Leisure Trust	SC039464	01/04/2008	Sports and leisure
High Life Highland	SC042593	15/09/2011	Sports, leisure and culture
Jobs and Business Glasgow	SC023930	28/04/1999	Employability
Live Active Leisure	SC000175	14/12/1965	Sports and leisure
North Ayrshire Ventures Trust	SC029608	25/11/1999	Regeneration
Raploch Urban Regeneration Company Limited	SC037372	04/07/2006	Regeneration
Town Centre Activities Limited	SC027217	11/11/1997	CCTV and shopmobility
West Dunbartonshire Leisure Trust	SC042999	07/03/2012	Sports and leisure

3.4 Detailed analysis

We wrote to each charity in the sample to request information to allow us a greater understanding of its governance, activities and particularly its relationship with the local authority. The information requested and reviewed was:

- Minutes of all meetings of the charity for a two year period
- Copies of service level agreements and other contracts between the charity and the local authority
- Copies of the charity's code of conduct, conflicts of interest policy and register of interests
- Details of the nominations committee, including commentary on recent appointments
- Details of the governance structure, including the current board mix, practical application of conflicts of interest policies and details around the sole member status.

3.5 Meetings

Once we had reviewed the information submitted we met with all 11 charities. These meetings concentrated on areas of concern we had from the initial work and also the more detailed reviews. We discussed in detail the trustee boards of the charities, the relationship with the local authorities and the types of activities that were being undertaken.

4. Detailed findings

The findings of our sample were broadly the same for 10 of the ALEOs. There was one charity for which the findings were slightly different (see 4.13 Case Study – North Ayrshire Ventures Trust).

4.1 Local authority as sole member

Ten of the 11 charities we looked at had the local authority as sole member. Community Safety Glasgow had the local authority and Scottish Police Authority as joint members.

With an external body as sole member there is a risk that the charity trustees will not be able to operate as the body in management and control of the charity. The sole member has the capacity to be the ultimate decision maker for the charity.

Through our review we found that although the local authorities were sole members they did not routinely use the powers this status gives them. The evidence suggested local authorities and ALEOs viewed these powers as a last resort to be used in exceptional circumstances. The ALEOs undertake duties in partnership with the local authority and in order to ensure these services are protected they have these powers as a fall back provision.

In recent inquiry cases, on the occasions where we have seen local authorities intervene and exercise their sole member status, the evidence has been that this was the result of a combination of events which threatened the financial stability and the stability of the charity boards. The local authorities involved believed that it was in the best interests of the charities and their beneficiaries to step in and exercise their sole member status.

Our view was that in these cases the local authorities were correct to intervene, to ensure that charitable assets and the continuity of provision was protected.

Some stakeholders drew attention to the implications of sole member status in taking the relationship between local authorities and ALEOs outwith EU procurement requirements (under what is known as the ‘Teckal exception’) where this relationship is sufficiently close. There may be benefits to local authorities in avoiding competitive tendering exercises. Some of the charities also felt that there were benefits to them, in that their contracts are more stable and they can therefore ensure a continuity of service to their beneficiaries. The procurement implications have influenced a number of moves in ALEOs to sole member structures. We did not specifically review procurement requirements, however we now understand that this is a key reason for this particular structure.

Our review of Live Active Leisure highlighted that they had been initially concerned about changing their constitution to allow the local authority sole membership. For this reason they developed a Memorandum of Understanding which set out the exceptional circumstances under which the sole member status would be invoked. While a Memorandum of Understanding is not a legally binding document it does ensure that both parties understand the position from the outset and we would recommend this as a tool to be used in this structure.

We considered whether there were similar structures used in other charities. Big Lottery have set up charities to manage sizeable funds. The funds came from Big Lottery but in order to utilise local knowledge they are operated through Independent Trusts. To ensure these funds were protected the charities had a Corporate Trustee in place and the Big Lottery appointed a Protector of the Trust to ensure integrity of administration. The use of Corporate Trustees and Protectors is similar to the monitoring by the local authority. It provides Big Lottery with the assurance that funds are being managed correctly and, ultimately, a vehicle to intervene if they are not.

4.2 Why do local authorities set up ALEOs?

Rates relief - Where a charity occupies premises for charitable purposes they are entitled to claim a mandatory 80% rates relief and the local authority can choose to top this up with a further 20% discretionary rates relief. Rates are collected by the local authority and then paid over to central government. Where a body is charitable and does not pay rates, this shortfall is financed by central government and, consequently, the local authority makes a saving on rates relief.

User benefits – The leisure and culture ALEOs we spoke to considered there to be clear user benefits to setting up as an ALEO. Services which had previously been part of a wider department were now more focused and this led to improved response to user needs. They also felt that specialists on the charity boards also led to improved understanding of user needs.

Expansion and new areas - Community Safety Glasgow said that as an independent body they could focus on specific areas and undertake expansion which would not be possible within the local authority. This had allowed them to extend their services relating to domestic abuse to other local authority areas and to extend their work with young offenders.

Consistent level of service – The employability charities said that the structure allowed them the ability to operate as a ‘one stop shop’ for all users of employability services. This ensured that users could take advantage of all opportunities.

Staffing – Some ALEOs highlighted that as these organisations are smaller than the local authority, and staff benefited from more flexibility in career development.

Funding - Some ALEOs did access other routes of funding which they may not have accessed within the local authority. This funding was for specific projects and allowed ALEOs to undertake services which would not have been possible within the local authority itself.

4.3 Skills of the board

In order to ensure that a charity is well run it is important that it has a board that operates effectively. The trustees must have the relevant skills and knowledge to run the charity and be free to act in the best interests of the charity. Our initial assessment showed that although the governing documents generally stipulated a majority of independent trustees (those which were independent of the local authority), the local

authority had the ability to appoint or remove trustees. We were concerned that this would lead to boards chosen by the local authority with regard to their requirements rather than that of the charity. An assessment of the current board and their skills was therefore extensively considered throughout our review.

4.4 Independent trustees – ratios

- **Ten of the 11 ALEOs had independent trustees.** The exception was North Ayrshire Ventures Trust (see the case study on page 22).
- **Seven of these had a majority of independent trustees** and on review of their minutes it was clear that these trustees regularly attended board meetings.

The three bodies that have a majority of Councillor Trustees are operating in this way for specific reasons.

- Capital City Partnership operates with a majority of Councillor Trustees, but they have very active observer members who attend board meetings. These observer members are prevented from acting as directors due to their roles within their own organisations but they represent the needs of various stakeholders in the charity. There was evidence that the input from other bodies mitigated the potential for the local authority to control the affairs of the charity through their board membership.

- Raploch Urban Regeneration Company has two Councillor Trustees and only one independent trustee. They had previously had a board with a majority of independent trustees. However, due to the recession and its impact, many of these board members left the charity and they were operating with a much smaller board. They commented that due to the current financial position of the charity they had difficulty in attracting new trustees. They had decided to work with this smaller board during this difficult period allowing quicker decision making and to recruit new trustees when their financial position was clearer.
- Jobs and Business Glasgow are governed by a board of 11, including five local authority trustees. Currently there are two independent trustee vacancies so the charity is working with a board of nine.

4.5 Independent trustees – appointments and removals

We spoke in detail to the ALEOs around how the appointments were made for independent trustees. In all cases, the local authority had powers to make appointments to the trustee board. However, in practice, the appointments stemmed from the charities themselves.

The charities **considered the skills** which were required within their boards when recruiting independent trustees, often through the use of a skills matrix.

The charities **then advertised for positions and formally interviewed** candidates. The majority used nominations committees for these processes, and ensured that the nominations committees had a balance of independent and local authority trustees.

Therefore, although the local authority must appoint the trustees officially, the recruitment work is undertaken by the trustees and then the local authority approves this. There had been no occasion within our sample where the local authority had not accepted the nomination provided by the board. Likewise, there had been no occasion where the local authority had stepped in to remove independent trustees.

The charities recognised the skills and knowledge which the independent trustees brought to the organisation. There were also comments around the stability which this brought. Local authority trustees change through the election process and having longer serving independent trustees allows for greater continuity.

4.6 Councillor trustees

Where Councillors act on the boards of ALEOs there is an inherent risk that they may put the needs of the local authority before that of the charity, particularly where there are matters relating to local authority contracts. We therefore closely reviewed

the actions that Councillors took at meetings and also conflicts of interest policies and registers of interest.

The Councillors we met with stated that they considered that they were acting for the charity in making decisions. Through discussions with the charities and other bodies it was clear, however, that this was not the case for all Councillor trustees.

The Councillor trustees were appointed through their position in the local authority. The rationale behind appointing Councillors to specific ALEOs was unclear, and the processes varied between local authorities. Some charities commented that it would be preferable if skills sets of particular Councillors were more fully considered prior to appointment. It was not always clear that consideration had been given to the Councillors' other interactions with the ALEO, such as through committees within the local authority. The internal roles of Councillors must be considered.

The charities provided Registers of Interests which outlined the interests the trustees have outwith the charity and these reflected the Councillors' position within the local authority. The Councillors did not always state their position in the local authority at the start of each meeting, but there was reference to the Register of Interests.

In our review we found that the local authority trustees did not generally withdraw from discussions where the general relationship or business with the local authority was discussed.

The Councillors did not believe the day to day business of the ALEO presented a situation which required them to withdraw. They were able to conduct their business putting the needs of the ALEO first, or as they put it 'with their ALEO hat on'.

We would agree that it is not necessarily required that local authority trustees withdraw themselves from all situations where local authority services or contracts were discussed. Given that ALEOs are closely related with the local authority through the services they provide and the funding they receive, it would not be practical for Councillors to remove themselves from all discussions pertaining to the local authority. There are however situations where Councillors must withdraw in order to exercise their charity trustee duties appropriately. These would be situations where it was clearly not possible for Councillors to put their duties towards the charity before those to the local authority. We noted that when Live Active Leisure discussed the position regarding accepting the local authority as sole member for example, the Councillor trustees withdrew, and we would regard this as an example of good practice.

4.7 The chair of the trustee board

The majority of the charities had an independent trustee as a chair of the charity. This is in line with the recommendations which were previously made in our 'Who's in Charge Guidance'. There were four charities which had Councillors as chair, however, and we discussed this with them.

The role of chair is a demanding one requiring a specific skills set and preferably experience in this role. Where there are independent trustees available with the relevant skills we would maintain that it is best practice to have an Independent chair. However, in cases where the skills can only be met by a Councillor Trustee, then it is acceptable to have a councillor trustee as chair.

None of the four charities reported any difficulties in operating with the Councillor as a chair and there was no evidence that this had adversely affected the ability of the board to undertake its duties.

4.8 Training

All the ALEO charities had ensured that there was training for their trustees. This was undertaken mainly by the legal or accountancy advisors for the charity. Some of the Councillors had also received training through their roles within the local authority. We reviewed training which had been provided to the trustees by the charities and found it covered areas such as the duties of the trustees under charity law and also conflict of interest considerations.

4.9 Funding sources

- The leisure and culture trusts receive their main funding from the local authority and the admission fees which are charged to use their services. The boards of these charities are taking steps to ensure that they maximise their admission fees through the use of incentives such as corporate

membership and ensuring that their facilities are of a standard which attracts users. This will minimise the impact of expected cuts to service level agreements. They also receive funding from Sport Scotland which was previously received by the local authority, and funding from the NHS for health initiatives. There were some occasions where these ALEOs had received funding from general funders to the third sector such as the Big Lottery but these were for small, specific projects which were in addition to the usual services provided.

- The employability charities received funding from the local authorities and also from various employability funders such as the Big Lottery and Department for Work and Pensions. Jobs and Business Glasgow also receive income from their commercial property rents.
- Raploch Urban Regeneration Company receives funding from Big Lottery for their community enterprise functions. In future they will also receive income from sales of land.
- Community Safety Glasgow receive income through their commercial security operations; this then supports the activities undertaken by the charities. In addition to the income which is received from the local authority, Community Safety Glasgow also receive funding for specific projects.

While these charities do receive some funding from external funders, this was not to support the services which are provided on behalf of the local authority. The leisure and culture trusts do not receive substantial additional funding and those charities which do are carrying out a variety of charitable activities, which are not the duty of the local authority to provide. We saw no evidence of funds being received by the ALEOs for the provision of statutory services other than from the local authority itself. There was no evidence that funds that might have otherwise been received by other charities were being received by the ALEOs.

4.10 Relationships with local authorities regarding funding arrangements

Where a charity receives funding from one key funder, there is a risk that the charity can be controlled through this funding and this will restrict the decisions of the trustees.

The charities we reviewed all have service level agreements with the local authority to provide a number of different services. The service level agreements all showed controls over the funding which was awarded to the charities. This included setting key performance indicators and engaging monitoring officers to ensure that standards were met.

The evidence in all cases was that it was the charity that set budgets and financial targets for the year. These budgets were compiled internally by financial staff and were reviewed by the board, either through an audit committee set up by the board or the full board itself. The position regarding the service level

agreement and requirements for funding was then discussed with the local authority.

The leisure and culture charities commented that as local authorities see cutbacks to their own budgets, the level of funding they receive has been affected. This does lead to more difficult negotiations around funding agreements; however the charities are working hard to manage within these constraints. The evidence was also that the charities set the prices for admission rather than the local authority. The local authority did require that there were adequate provisions made for concessionary prices, but they did not otherwise contribute to pricing decisions.

The charity trustees were able to make decisions about the services which the charity provided. On occasion the leisure trusts had been asked to undertake new services by the local authority but had turned these services down as they did not fit with their objectives.

Council officers are appointed to monitor the funds awarded to the ALEO, and these officers will sometimes attend board meetings of the ALEO in an observer capacity. The charities used this presence as an opportunity to question the local authority on their policies through the officer and also used it as a point of contact with the charity. There was evidence that the presence of a Council officer for this purpose would also tend to aid the independence of the Councillor trustees in that they are able to act as trustees and not as a contact for the local authority.

It is clear that the local authorities take steps to monitor the finance they provide and as there is a reliance on this funding it is important that the ALEOs meet the requirements set out in the agreements. There is potential that this position could lead trustees to be influenced by the local authority. This situation is of course not unique, and there are similar pressures in other charities. Many charities receive their primary funding from one funder and there will be some pressure to maintain this relationship.

When reviewing the funding agreements we also considered the requirements of other (third party) funders. Jobs and Business Glasgow and Community Safety Glasgow – who receive funding from a number of different sources, commented that although there were criteria to be adhered to in connection with the local authority funding, this was no more rigorous than that which is applied by other funders. We spoke with representatives of the Big Lottery who advised that they too have various criteria which must be met to receive their grant funding and their funding will be assessed against outcomes.

4.11 Dependence on the local authority

A number of ALEOs use services provided by the local authority such as HR services, payroll services and also grounds maintenance services.

When trustees are acting for the charity they should be able to **ensure that they choose the correct service for the charity**. This means being free to tender for services and ensure that they receive the right combination of service level and price. We explored this area at our meetings with the ALEOs.

When ALEOs were first set up they tended to use the local authority services to allow **for ease of administration** during the handover period. Therefore newer charities such as West Dunbartonshire Leisure Trust and High Life Highland had been established with three year contracts for services and were using these services. More established charities such as Fife Sports and Leisure Trust still used the local authority for some services but had developed their own department for HR and were considering tendering for grounds maintenance. Live Active Leisure also used some local authority services but had taken the step of tendering services and had awarded the contract for waste disposal to a private firm.

Overall the charities tended to use the local authority services in the start up phase as this was of an initial benefit to them, but they were free to tender for services after a period, and importantly **they did review the services which were being provided**. In some instances it was preferable to retain the local authority services as these were offering the best value, but where these were not they moved to alternative suppliers or developed in house solutions. They were therefore ensuring that the interests of the charities were maintained.

4.12 Charitable activities

In order to be a charity a body must have only charitable purposes. Charitable purposes are defined by the 2005 Act. The charity must be undertaking activities in furtherance of these charitable purposes.

When we initially selected the sample we were satisfied that the leisure and culture trusts, employability bodies and regeneration bodies had charitable purposes and were undertaking charitable activities in respect of these purposes.

We did, however, note that both Community Safety Glasgow and Town Centre Activities had activities outside the usual remit of ALEOs. We therefore reviewed the activities of these charities closely.

We found that Community Safety Glasgow carries out activities in support of its purposes, ranging from improving community safety to providing an incident room in a major incident. They also work extensively with offenders or persons who are identified as potential offenders.

In addition to the provision of CCTV services to aid the emergency services, Town Centre Activities provide access to local amenities through a Shopmobility Service and undertake a number of activities to attract communities to town centres.

We are therefore satisfied that the charities within our sample meet the charity test.

4.13 Case Study – North Ayrshire Ventures Trust

North Ayrshire Ventures Trust is a regeneration charity which had income of only £34,241 in the year to March 2013. On review we noted the following:

- This charity has a sole member in North Ayrshire Council and their constitution allows the appointment and removal of trustees by the local authority.
- The charity does not have any individual policies and relies upon the local authority's policies for its governance.
- The charity also does not have any independent trustees and the current trustees are two Councillors and two Council officers.
- The charity's purposes require revision to meet the charity test.

When we met with representatives of this charity we were advised that the charity was in a period of change and the charity trustees were considering how to move the charity forward. They recognised that the current board structure requires a change to move the charity forward.

We have since received an application from the charity to change the purposes of the charity to ensure that they are charitable. The new purposes of the charity are acceptable.

We have been advised that the charity will now be undertaking council and community led physical regeneration, in relation to those projects which are not statutory Council responsibilities. They will also be creating activities and facilities for young people and undertaking community development activities.

The charity has also taken a decision to appoint independent trustees to the board and will progress this in early 2015.

5. Conclusion and what's next

We reviewed this group of charities due to the inherent risks within their governance structure. Our previous experience and the way in which these bodies are constituted led to concerns that these bodies would be controlled through the local authority and are not free to operate as independent charities.

The evidence which we found throughout the review did not substantiate our initial concerns. With the exception of North Ayrshire Ventures Trust (see case study), we were satisfied that the charities were coping sufficiently well with the governance challenges.

The charities we reviewed had well established boards with a mix of independent and partner trustees. We found that the independent trustees and Councillor trustees we met with were engaged with the charities and ensured they were well run. We were encouraged by the fact that charity trustees ensured that they received training for their roles.

Although there was a relationship with the local authority, this was not one where the local authority routinely exercised its powers of control. The relationship is of a partnership nature, and the local authority and ALEO work together towards the provision of services. The structure in which the local authority operates as member is there as fallback provision to ensure that ultimately these services are protected; it is only used in exceptional circumstances.

The funding mechanisms we saw in place were not unusual in the charity sector as a whole. Checks and safeguards are in place to ensure monies are correctly spent, but these are not onerous. We would

expect there to be a reasonable level of monitoring where there are sizeable funds involved.

In conclusion we are satisfied that, overall, the charitable ALEOs are operating well within their unique environment. We will continue to monitor them under our usual monitoring regime and ask that they consider the recommendations below.

Recommendations

- **Memorandum of Understanding** – We accept that the sole member structure may be preferable to both bodies due to procurement legislation and also to ensure that, ultimately, statutory services are protected. However, this power should only be exercised in exceptional circumstances and a memorandum of understanding would set out these circumstances more clearly.
- **Robust induction procedures** – Councillor trustees may change regularly due to the election process. Charitable ALEOs should ensure that their induction processes are robust to manage this change effectively and ensure that new trustees fully understand their duties.
- **Councillor trustees selected by skills set** - Trustee boards should contain an appropriate mix of skills. While independent trustees were appointed on the basis of their skills, the selection process for Councillor trustees was less robust. Charities should consider how the Councillor trustees are selected, and consider applying skills matrix equally to these trustees.

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- **Regular reviews** – Many of the ALEOs we met with were changing or expanding services. They should ensure that these services fit with their purposes or, where necessary, seek our consent to amend their purposes. As the ALEO develops they must ensure that the ALEO board and its objects continues to be fit for purpose.
 - **Separation from the local authority** – Where Councillors sit on scrutiny or finance committees within the local authority, we would recommend that these are not the same committees which deal with the ALEO they act on. Where there is a cross-over, the effectiveness of scrutiny would be diminished.
 - **Sub – committees** – We have seen sub-committees being used successfully within many of the ALEOs. These tend to be headed by independent trustees, allowing for a greater assurance of independent operation. We would recommend that if the size of the charity and the board allows, sub-committees should be utilised.

Appendix 1 – List of charitable ALEOs

Aberdeen Care And Repair Sport Aberdeen Ltd	Aberdeen City	High Life Highland	Highland
Aberdeen Sports Village Ltd	Aberdeen City	Inverclyde Community Development Trust	Inverclyde
Garthdee Sports and Alpine Park	Aberdeen City	Riverside Inverclyde	Inverclyde
Aberdeen Performing Arts	Aberdeen City	Inverclyde Leisure	Inverclyde
Aberdeenshire Care & Repair Group	Aberdeenshire	Moray Leisure Ltd	Moray
Scotland's Lighthouse Museum Ltd	Aberdeenshire	North Ayrshire CCTV Ltd	North Ayrshire
Angus Community Care Charitable Trust (ACCCT)	Angus	Irvine Bay Regeneration Company	North Ayrshire
Angus Care and Repair	Angus	North Ayrshire Ventures Trust	North Ayrshire
Oban and Lorn Community Enterprise – Atlantis Leisure	Argyll & Bute	North Ayrshire Leisure Limited (known as KA Leisure)	North Ayrshire
Capital City Partnership	City of Edinburgh	Culture NL Limited	North Lanarkshire
Festival City Theatres Trust	City of Edinburgh	Town Centre Activities Ltd	North Lanarkshire
Edinburgh Leisure	City of Edinburgh	North Lanarkshire Leisure Ltd	North Lanarkshire
Leisure and Culture Dundee	Dundee City	Pickaquoy Centre Trust	Orkney Islands
Dovetail Enterprises (1993) Ltd	Dundee City	Horsecross Arts Ltd	Perth and Kinross
East Ayrshire Leisure Trust	East Ayrshire	Live Active Leisure Ltd	Perth and Kinross
Kilmarnock Leisure Centre Trust	East Ayrshire	Renfrewshire Leisure Trust	Renfrewshire
East Dunbartonshire Leisure & Culture Trust Ltd	East Dunbartonshire	Jedburgh Leisure Facilities Trust	Scottish Borders
Brunton Theatre Trust	East Lothian	Borders Sport and Leisure Trust	Scottish Borders
Enjoy East Lothian Ltd	East Lothian	Shetland Amenity Trust	Shetland Islands
Falkirk Community Trust Ltd	Falkirk	Shetland Arts Development Agency	Shetland Islands
Fife Environment Trust	Fife	Shetland Recreational Trust	Shetland Islands
Fife Golf Trust Ltd	Fife	Shetland Charitable Trust	Shetland Islands
Fife Coast and Countryside Trust Ltd	Fife	South Carrick Community Leisure	South Ayrshire
Fife Cultural Trust	Fife	Regen:FX Youth Trust Limited	South Lanarkshire
Fife Sports and Leisure Trust Ltd	Fife	South Lanarkshire Leisure and Culture	South Lanarkshire
Clyde Gateway URC	Glasgow	McLaren Community Leisure Centre Holdings	Stirling
Community Safety Glasgow	Glasgow	Stirling District Tourism Ltd	Stirling
Jobs and Business Glasgow	Glasgow	Raploch Urban Regeneration Company	Stirling
Culture and Sport Glasgow	Glasgow	Active Stirling Ltd	Stirling
Poolewe & District Swimming Pool Assoc	Highland	Clydebank Rebuilt	West Dunbartonshire
Caledonia Community Leisure Limited (known as Inverness Leisure)	Highland	West Dunbartonshire Leisure Trust	West Dunbartonshire
		West Lothian Leisure Ltd	West Lothian

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