

Conclusions on issues relating to the Lennoxtown Initiative

Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. We help the Auditor General for Scotland and the Accounts Commission check that organisations spending public money use it properly, efficiently and effectively.

Contents

Introduction	4
Background.....	4
Issues raised by correspondents	6
Key messages.....	12
Action taken by Audit Scotland.....	13

Introduction

1. As the auditors of Scotland's public services, Audit Scotland receives correspondence from members of the public about a wide range of issues relating to public bodies. We welcome information from members of the public and their elected representatives about matters that concern them, and we have a clear process for dealing with these. More information about our role in looking at issues of public concern is on our website www.audit-scotland.gov.uk.
2. During 2014 and 2015, Audit Scotland received correspondence from a number of individuals about The Lennoxtown Initiative (LI), a community regeneration company and registered charity. The LI was supported by East Dunbartonshire Council (EDC), NHS Greater Glasgow & Clyde (NHSGGC)¹ and Scottish Enterprise Dunbartonshire (SED). SED ceased to exist following restructuring in April 2008, with certain roles and functions transferred to other public bodies, including Scottish Enterprise.
3. The issues raised in the correspondence focus on the relationship between LI and Celtic plc (Celtic). These have also featured in discussions on social media sites, been the subject of Freedom of Information (FOI) requests to the public bodies concerned and stimulated a degree of press coverage.
4. Auditors have carried out enquiries into the governance of dealings between LI and Celtic. The focus of these enquiries was on whether there is any evidence of corruption or fraud and whether there was sufficient monitoring and management of the relationships between the public bodies, the LI and Celtic (taking account of the principles of Following the Public Pound²).

Background

5. The LI was incorporated in 2001. It operated as a partnership between the local community, NHSGGC, EDC and SED. SED subsequently withdrew from the company in March 2008. The objectives for the LI were to:
 - develop people's awareness of, access to and skills for work
 - overcome barriers to individual inclusion
 - sustain and grow the local employer base
 - enhance the capacities of local community groups and enterprises
 - market the village's attractions

¹ Structural changes have been made to, and within, the health board covering Lennoxtown since the Initiative was started in 2001. The Primary Care Trust was dissolved on 31 March 2004. NHS Greater Glasgow took over responsibility for its services from 1 April 2004 until 31 March 2006 when NHS Greater Glasgow and Clyde was formed. For convenience, we use the current health board name NHS Greater Glasgow and Clyde throughout this report as we are directing our key messages and learning points to that body.

² In 1996, the Accounts Commission and the Convention of Scottish Local Authorities (COSLA) set out the principles of funding external bodies in "*The Code of Guidance for Funding External Bodies and Following the Public Pound*". In 2005, this became statutory through Ministerial direction under s51 of the Local Government in Scotland Act 2003.

-
- mobilise the engagement of the community
 - revitalise the physical fabric of the village
 - integrate service delivery to Lennox town.
6. A key strategy for funding the work of the LI was for it to be given the proceeds of the sale of packages of land that had formed the site of Lennox Castle Hospital which, in 2001, was being run down leading to final closure in 2002. The site of the former hospital was divided into two. One (“lower”) area was designated for housing developments and had outline planning permission at a capacity of some 350 units. The other (“upper”) area was designated as greenbelt, and planned for appropriate countryside use, including agriculture, tourism and outdoor recreation.
 7. In November 2004, Celtic approached NHSGGC and expressed an interest in purchasing the 19.45 hectares of land comprising the “upper” area. Its intention was to construct and operate a training ground and sports academy. There were no planning barriers identified for this proposal and, following negotiations and due legal procedures, ownership passed to Celtic in June 2006 and its Training Centre opened in October 2007.
 8. The purchase price paid by Celtic was £493,000, exceeding the independent professional valuation of £480,000 obtained by NHSGGC. In keeping with the arrangements agreed, the £464,333 proceeds of the sale (price paid less NHSGGC costs) were passed by NHSGGC to the LI in August 2006 for it to apply to its purposes and objectives. The LI was also provided with £253,000 in August 2007 by SED. This represented a contribution SED had agreed to make, initially in December 2006, to Celtic’s training centre development to assist with land remediation costs on the site.
 9. As part of Celtic’s initial expressions of interest in the site at Lennox town, it referred to the advantages that the club’s community programmes could have in the area were it to be the location for the training centre. As a result of discussions during the period of negotiations around the sale of the land, an arrangement was made that Celtic would provide a range of community services through the training centre, including access to facilities for local groups, coaching, and other activities. A Service Level Agreement (SLA) was signed in 2006 to cover this arrangement. It included a list of the types of services that would be provided and set out a schedule of fee payments due to be made to Celtic for these services. Payments were due at various dates, up to June 2013, following the football club receiving title to the land. The total amount payable was £535,071 (plus VAT).
 10. While the LI still exists as a company (limited by guarantee with charitable status), it has not been active for a number of years, effectively being “mothballed”. Its three members of staff were made redundant in 2011. This inactivity appears to be largely due to downward shifts in the market for land for development, which prevented the expected flow of income from land sales, as well as other resource pressures on public bodies. During the 2013/14 financial year, after the LI was “mothballed”, EDC honoured a final payment in the SLA for £56,981 (plus VAT), citing its wish to ensure that community benefits would continue.

Issues raised by correspondents

11. Correspondents have raised a number of concerns about the relationship between the LI and Celtic, and the actions of the three public bodies concerned. A key suggestion is that in effect, the SLA was designed to ensure that Celtic recouped its land purchase money over the first few years after the deal. It is proposed by correspondents that this could, at the very least, appear fraudulent or corrupt. Correspondents also expressed doubt about the services provided in return for the payments made to Celtic, and asked about quality, quantity and monitoring arrangements. We were also asked to consider the circumstances in which one individual appeared to have had a dual role in both the NHS Board and the LI during the course of the developments and whether there might have been a conflict of interest.
12. It should be noted that the LI was involved in a range of other activities over this period, and funds, other than those relating to Celtic, were provided by public bodies to support these activities and the Initiative's running costs. We have not looked into any of these other areas in the course of our work.
13. Audit work of this nature is made more difficult by the amount of time that has passed since the events referred to took place. Most of the individuals that were directly involved have long since moved on, and management and organisational restructuring has taken place in the public bodies concerned, particularly in NHSGGC and in SED/SE. These factors have combined to reduce the quantity and quality of detailed information and evidence available to us. Moreover, the LI itself, while technically still a registered company, has not been active for some years, has no staff and limited accessible records. We spread our investigation over a number of months to allow us the maximum opportunity to access materials and as much information as we could.
14. We can, however, provide the following conclusions on the issues raised by the various correspondents. Each item of correspondence we received was on a broadly similar theme, with the same question being raised in several individual submissions. For ease of presentation, we have brought all of the specific points into nine grouped areas:

14.1. *Could the Celtic purchase of Lennoxtown and the "return" of funds through the LI/Celtic SLA appear fraudulent and/or corrupt?*

Findings: The land purchase was carried out in accordance with the NHS Scotland Property Transactions Handbook which sets down the regulations in place surrounding the acquisition and disposal of properties by NHS Holding Bodies (this includes Health Boards such as NHSGGC) in Scotland. An SLA was established between LI and Celtic and signed by both parties. We have a copy of this. Payments made to Celtic by LI, and a final payment made by EDC, were consistent with the payments schedule detailed in the SLA. Services were provided by Celtic, in line with some of those described in the SLA. We have commented further on the SLA and delivery of services in sections 14.3 and 14.4 below.

Conclusions: We have not identified any evidence that the purchase of the Lennoxton site or the transfer of funds from LI to Celtic was either fraudulent or corrupt. However, there are a number of weaknesses in the SLA itself, and a lack of monitoring arrangements by the LI and the public bodies of the services provided, that make it difficult to demonstrate the links between the fees paid and the value or quantities of service provided. This creates an environment in which accusations of fraud or corruption are more easily made and are more difficult to rebut.

14.2. Was an "in-principle" Celtic SLA offered to Celtic prior to their purchase of Lennoxton?

Findings: In December 2005, a paper was presented to the LI Project Development group that confirmed LI had held discussions with Celtic about the establishment of an SLA to deliver a community access programme for Lennoxton and the wider EDC area. Documentation confirms that the process which culminated with Celtic purchasing the Lennoxton site, commenced with Celtic approaching NHSGGC in November 2004 with an expression of interest in the site for use as a sports academy. Celtic also wrote to LI in March 2005 referring to the possible purchase of the site and raised the potential for its community programmes to benefit the local area were it to operate from the site.

The offer from Celtic was formally accepted by NHSGGC on 10 May 2006 and the recorded settlement date was 29 June 2006. The SLA was signed by an authorised officer of LI on 20 January 2006 and by Celtic on 16 May 2006.

Conclusions: We can confirm that an SLA was drawn up prior to the purchase of the Lennoxton site being finalised. It was not signed by Celtic until after NHSGGC had accepted its offer to purchase the Lennoxton site. However, it is not unusual for discussions around community benefits to accompany significant development in an area. We are not aware of any evidence that suggests there was anything more to the arrangement than this.

14.3. Was the Celtic SLA ever a formal agreement, with defined and costed services and systems for monitoring of quantity and quality, or was it "an ad-hoc fund where monies were taken out as occasion demanded"?

Findings: A formal SLA was signed and put in place between the LI and Celtic. The agreement includes a schedule, part 1 of which lists "The Services". This is essentially a description of four broad types of service that would be provided. For each, there is an indication, but only an approximation, of the quantity of service in hours and numbers of weeks per annum. Part 2 of the schedule details the "Services Fee" as a payment timetable consisting of eight payments over a seven year period. These commence with two larger initial payments followed by roughly similar amounts annually. The total fee over the nine-year period of the SLA totals £535,071 (excluding VAT). Prices per service are not specifically defined, nor are times when services will be provided. The SLA refers to a "Services Timetable", but we did not find this during our investigation and could see no reference to such a document while reviewing a selection of LI Board minutes. Payments were made by the LI to Celtic which were consistent with the defined fee payment schedule.

Conclusions: In our view, the SLA was not sufficiently robust for effective management of the provision of services, especially in the absence of a more detailed specification of the services to be provided that may have been evident in the form of a "Services Timetable". The primary weakness in the approach adopted by the LI and the public bodies was that payments were made in accordance with the anniversary of the SLA commencement, and against a relatively vague description of services, rather than in response to an invoice detailing the specific delivery of a quantified and evidenced service on a specific occasion. There appears to have been no control system of reconciliation, very limited monitoring by the LI or the relevant public bodies involved at the time, and no established quality assurance process that we could identify. As a result, it is not possible for the public bodies to demonstrate Best Value as they are required to do.

14.4. *Did the three public authorities comprising LI (NHSGGC, EDC and SED) 'Follow the Public Pound' and track how their contributions delivered services and met their intended objectives?*

Findings: The Following the Public Pound (FtPP) Code is designed to ensure that the core principles of openness, integrity and accountability apply to councils in all of their decisions on spending public money. These principles apply equally to funds or other resources, which are transferred to arms length bodies such as companies, trusts, and/or voluntary bodies. The code was established in 1996, but in 2005 was given a statutory basis under provisions in the Local Government in Scotland Act 2003. It is closely associated with the statutory duty of Best Value established by the same 2003 Act, the principles of which also apply to other public sector bodies through the formal responsibilities of their Accountable Officers.

NHSGGC, EDC and, up until March 2008, SED were represented on the LI board by nominated officers who acted as "Partner Directors". Through this role they, and the other community directors, had oversight of all the LI's activities and were kept informed of progress against these activities through attendance at board meetings. However, the involvement of NHSGGC, EDC and SED representatives on the LI board as directors, does not in itself, represent an appropriate or sufficient level of monitoring for a service-based arrangement of this kind.

We reviewed documentation, including LI minutes, copies of summer and holiday programmes, and evidence that weekly lets were in place, in relation to the services delivered by Celtic under the SLA. The limited material available indicates that there was some regular activity consistent with the spirit of the schedule established in the SLA. Some of the services listed in the SLA were not provided at all, reportedly because LI did not request any of these. We acknowledge that the need for some services considered appropriate or desirable at the time the SLA was drafted might change, but we could find no record of these variations being discussed or agreed. The relevant bodies, including Celtic, have been proactive in identifying opportunities to deliver additional services that are consistent with the overall objective of the SLA to provide a range of youth, community and school initiatives. This has continued in the period since the LI was "mothballed".

We have detailed above the limited monitoring of services in relation to payments of fees. We also found that there was no systematic monitoring by the board of LI of services delivered, quality of performance, or achievement of objectives in relation to the SLA. Minutes of its meetings show occasional verbal reports to the Board on activities taking place. These were very general in nature. A further example of the limitations of the arrangements in place is evident from the minutes in April 2008. These indicate that progress on the delivery of the SLA was slow. While some remedial action was agreed at the meeting to address this, there was limited progress reported on the outcome of this at subsequent meetings.

Conclusions: LI, and the three public bodies (EDC, NHSGGC, and, until March 2008, SED), as they were represented by officers as directors on the board of LI, should have had more robust processes in place to demonstrate that the public funds provided were used for the charitable purposes intended, and that use of the resources in this way represented Best Value.

14.5. *What were the circumstances of a payment of "£463,000" from NHSGGC to LI in November 2006, and a payment of "£390,000" from LI to Celtic as shown in the LI 2006/7 annual accounts? What services were delivered by Celtic for this and how was delivery monitored?*

Findings: As stated above, LI received £464,333 (not £463,000) from NHSGGC in the year ending 31 March 2007. This represented the transfer of the money received from Celtic for the purchase of the Lennox Castle Hospital site (£493k sale price less expenses). There was no payment of £390,000 in the LI accounts for the year ending 31 March 2007, but there was a payment of £329,001 and we have assumed this is the queried payment.

The SLA payment schedule has an initial payment of £83,000 on the commencement date (the day title to the asset passes) and a further £197,000 thirty days after commencement date. The SLA is exclusive of VAT. If we apply 17.5% VAT to these payments this totals £329,000. This up-front payment was agreed by LI to reflect set-up costs for the programme. A report to the LI Project development group in December 2005 notes that the payment "*takes account of the necessary set up costs including administration support, project management, marketing and publicity.*"

Conclusions: The £329,001 payment to Celtic is consistent with the agreed payment schedule in the SLA. However, it is a significant proportion of the overall costs of the SLA and it is not clear that the LI was justified in making such a large payment up front, several months before the Training Centre opened in October 2007. It is unlikely that Celtic would have been including any significant additional infrastructure into its development simply to deliver the SLA. Our conclusions on the monitoring of the services delivered by Celtic are documented earlier.

14.6. Did NHSGGC direct payments into LI's restricted funds for the Celtic SLA? If it did, why were the funds not directed into common funds available to the charity?

Findings: While LI ring-fenced money for the Celtic SLA, NHSGGC did not specifically direct the money from the sale of the land to Celtic into the restricted fund at LI. The funds were available to LI to finance any charitable activity consistent with its charitable objectives. Whether or not charity trustees have the power to create restricted funds, unrestricted funds can be spent on the same purposes as restricted funds, for example by spending more on a project for which a restricted grant has provided funding. In practice, unrestricted funds may be transferred to meet any overspending on a restricted fund.

Therefore NHSGGC not specifying the use for the funding would not prevent LI from using it to finance the Celtic SLA. If the LI board had taken a formal decision to earmark these funds for the Celtic SLA, the annual accounts for LI should have disclosed them as an earmarked part of the unrestricted fund rather than part of the restricted fund. We have not seen any evidence of such a board decision being taken.

Conclusions: Technically, the funds should have been disclosed in LI's accounts as unrestricted rather than restricted funds, however LI was entitled to spend them on the Celtic SLA.

14.7. Was the NHS Greater Glasgow payment into LI originally to be used for the establishment of an Integrated Health Centre? Given that the Integrated Health Centre was not delivered, were those funds redirected to the Celtic SLA?

Findings: An Integrated Health Centre was one of the key projects listed in the Tripartite Agreement, entered into by the LI, NHSGGC and EDC in June 2001. However there is no specific link between the NHSGGC funds and the provision of the centre. We noted a paper to the Board of NHSGGC on 22 October 2002 called 'Disposal of land at the former Lennox Castle Hospital' in which the Chief Executive of the Primary Care Trust asks the members to enter into the tripartite agreement in relation to the disposal of the Trust's landholding at Lennox Castle Hospital. The paper states that the overall objective of the pooling arrangement is 'to maximise the proceeds of the disposal of the former Lennox Castle Hospital site within the context of the Lennox Initiative.' The paper also states that potential receipts should be 'sufficient to fund up to £1m for a new integrated health facility which may be part of a larger centre, integrated with social services and other agencies'.

At the time the paper was presented, the expectation was for a far greater quantity of land to be sold, with estimated receipts of between £3.5 million and £5 million expected from the whole site (not only that part which subsequently became Celtic's Training Centre). Due to a change in market conditions, only limited assets were sold meaning the funding transferred to LI from sales was much less. The paper does not state that the funding to LI was to be used solely for an integrated health facility, but that such a facility could be one of the benefits from the land sales.

Conclusions: While the establishment of an Integrated Health Centre was a project that the funds could have been invested in, there was no obligation on LI to do so and the capital receipts from land were far less than would have been required for a health centre project. Furthermore, as detailed above, NHSGGC placed no restrictions on the funding provided to LI from the sale of assets.

14.8. Why was Scottish Enterprise Dunbartonshire's payment of "£254,000" to support Celtic's land remediation costs made via the Celtic SLA rather than directly to Celtic?

Findings: The original offer made by SED was for a payment to be made directly to Celtic of £253,000 (not £254,000 as stated in correspondence). The formal offer was made on 22 December 2006 with Celtic accepting this offer on 15 January 2007. Correspondence held on file by SE highlighted a subsequent change of approach with a preference for LI to act as agents for SED and for the funding to be channelled through LI to Celtic. There was further correspondence to clarify issues and a new agreement was drawn up between SED and Celtic. A further agreement between SED and LI was signed on 29 August 2007, which required LI to pass the full amount on to Celtic, which is what subsequently happened.

Through discussion with an officer who previously worked at SED we have obtained verbal evidence that the payment was routed through LI as a means of helping to establish the charity, improve job creation and because it was envisaged that LI would then be in a better position to negotiate access for local people to Celtic's facilities. However, we have been unable to obtain documentary evidence to confirm these reasons for the change in approach to the funding.

Conclusions: We can confirm that the funding awarded was subject to appropriate approvals and was in accordance with the type of support SED/SE would give to similar developments. Scottish Enterprise Dunbartonshire Board papers recognised that '*there may be advantages in funding this project via LI and further discussion will take place before the optimum funding route is confirmed*'. However, as a result of the passage of time, there is no further information or evidence available to explain or support the decision to change the approach and channel the funding through the LI.

14.9. Was there a conflict of interest in the roles played by a senior NHS manager throughout the series of transactions between the NHSGGC, LI and Celtic? To what extent were reasonable checks and balances possible, given these roles?

Findings: A senior NHS manager, who was Head of Property Management for the Primary Care Trust / Division from November 2000, was seconded to the LI in October 2004 and served as its Chief Executive. This person resigned from the Health Board in early January 2007 and also left the LI that same month.

During this period of office as Chief Executive of the LI, the senior manager was directly involved in the discussions and negotiations with Celtic on the sale of the land between November 2004 and August 2005 when the sale was concluded.

Conclusions: In paragraph 13, we refer to the limitations on our enquiries as a result of factors such as passage of time and restructuring within the public bodies concerned. As a consequence of this, limited information was available to us on the circumstances surrounding the senior manager’s secondment and tenure with NHSGGC, or how the arrangement was managed. We recognise that board level approval procedures would have been in place for key NHSGGC decisions.

We also refer earlier in this report, to the unsatisfactory levels of monitoring and feedback by the public bodies (including NHSGGC) involved in LI. Such an environment allows accusations of impropriety and conflicts of interest to be more easily made and more difficult to rebut. This has also contributed to information not being available regarding any potential conflict of interest that may have been inherent in the secondment arrangement.

It is disappointing that we have been unable to be satisfied about these matters and report accordingly. There is some evidence that a dual role existed, and there was certainly a perception of that being the case. We would always urge caution with such an approach, as the management and use of public money and assets should always be visibly above reproach.

Our inability to provide clear assurance on this issue is consistent with the overall situation surrounding the way in which the public bodies concerned managed their involvement in the LI. However, our enquiries have found no evidence of impropriety in the senior manager’s role or activities.

Key messages

15. The key messages from our investigation can be summarised as follows:

- There is no evidence of fraud or corruption. However, poor management practice on the part of the LI and the relevant public bodies involved in it has at the very least allowed accusations to be made and valid questions to be asked.
- There were certainly services delivered by Celtic as envisaged by the LI in establishing the SLA, but there is insufficient evidence to say whether these were at an appropriate level or quality, or if they represented value for money. Public bodies are required to have suitable monitoring arrangements in place to be able to demonstrate Best Value in the use of public money, even when delivering services through “arms length” or other third party organisations.
- Other than the activities themselves taking place – and minutes of the LI suggest participants, parents, school teachers and other members of the community enjoyed these – we could find no evaluation or record of the public value, (such as social inclusion, increased employability or skills), which has accrued to the Lennoxton area in return for public money spent. Given these were key objectives for the LI, and indeed for the public bodies involved, we would have expected those concerned to have had a considerable interest in monitoring and evaluating the extent to which the SLA with Celtic was contributing to these outcomes.

-
- The SLA itself was very limited in providing a sound basis for managing and monitoring the arrangements, for protecting public money or demonstrating Best Value.
 - LI and the public bodies represented on its board had few controls in place and applied little systematic performance monitoring or management of the arrangements and activities associated with the SLA. This has contributed to us being unable to provide more assurance on the role played by the NHS Head of Property Management when seconded to LI as its Chief Executive between 2004 and 2007.
 - Public bodies are increasingly delivering services and pursuing their objectives through arms length bodies or as part of more integrated joint working with a range of organisations. It is critically important that effective management and monitoring arrangements are applied, including those that arise from the principles of Following the Public Pound, to ensure public money is well spent and intended outcomes are achieved.

Action taken by Audit Scotland

16. We have provided each of the individuals who wrote to us on these matters with a copy of this report. We are grateful to each of them for taking the time to bring their concerns to our attention.
17. The respective external auditors have reported to East Dunbartonshire Council, NHS Greater Glasgow & Clyde and Scottish Enterprise on the conclusions we have reached. We expect the public bodies themselves to formally consider our conclusions and take action to ensure that appropriate lessons are learned and the necessary improvements in practice are implemented for the future.
18. We have also provided a copy of this report to the Chair of the Lennoxtown Initiative, to Celtic plc, and to the Office of the Scottish Charity Regulator.
19. We have informed the Auditor General for Scotland and the Accounts Commission for Scotland about our investigation and our conclusions.
20. We have published a copy of this report on the Audit Scotland website:
<http://www.audit-scotland.gov.uk>