

REPORT TO: SCRUTINY COMMITTEE - 24 AUGUST 2011

REPORT ON: ARMS LENGTH EXTERNAL ORGANISATIONS: ARE YOU GETTING IT RIGHT?

REPORT BY: DIRECTOR OF FINANCE

REPORT NO: 375-2011

1 PURPOSE OF REPORT

To provide elected members with a summary of the above national study that has recently been issued by Audit Scotland on behalf of the Accounts Commission.

2 RECOMMENDATIONS

It is recommended that elected members note the key findings arising from this national study, including the questionnaire checklist and self assessment toolkit (see appendices 1 and 2) that may be useful to help elected members consider the Council's position and, in particular, to identify where further improvements can be made.

3 FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report.

4 MAIN TEXT

4.1 As part of its series of 'How Councils Work' publications, Audit Scotland carried out a review of Arm's Length External Organisations (ALEOs) on behalf of the Auditor General for Scotland and the Accounts Commission. The report is aimed at both Councils that are considering establishing ALEOs together with those with existing ALEOs and is designed to promote and encourage good practice in the way these organisations are operated. The report also focuses on how Councils establish ALEOs and maintain governance and accountability for both finance and performance.

4.2 The report is divided into the following main areas:

Part 1 - Setting the scene

This section outlines the background of how ALEOs operate and provides details of the financial and non-financial benefits they can provide to Councils. The report recommends that the established 'Following the Public Pound' principles provide the basis for sound governance upon which relationships with ALEOs can be managed.

Part 2 - Getting it right from the start

This section provides information for Council's that are considering setting up ALEOs including options appraisal guidance, the importance of preparing a sound business case and an outline of the key governance and operational issues that should be considered as part of the decision making process. The report emphasises that the clarity of roles and responsibilities for both officers and councillors is critical and provides guidance for managing any potential conflicts of interest that may arise. This section of the report also outlines the importance of performance monitoring although recommends that arrangements in place for this should be proportionate to the scale of the activity and the risks involved.

Part 3 - Keeping it right

The key messages in this section relate to the importance of good quality monitoring information to review the finances, risks and performance of the ALEO. This part of the report also recommends that Councils should periodically review ALEOs to ensure this method remains the best option for service delivery and that training and guidance should be provided to both councillors and officers associated with the ALEOs on an ongoing basis to ensure they have the necessary skills to undertake their duties and provides examples of specific areas that should be considered.

Part 4 -Key points for action

The final section summarises the key action points and conclusions, relating to parts 2 and 3 above, for councillors and officers involved with ALEOs to consider.

In terms of Part 2 - Getting it right from the start, the key actions for Councils include they must:

- observe the Accounts Commission/COSLA Code, and other guidance to understand their responsibilities and good practice when involved with ALEOs
- base any decision to set up an ALEO on sound options appraisal and feasibility assessments including risks
- ensure that where they use an ALEO it fits their priorities or policy objectives
- consider governance at the outset to ensure the Council and the ALEO can effectively:
 - scrutinise performance and be held accountable
 - monitor costs, performance, and risk
 - engage service users and citizens
- clearly understand and set out the roles of boards, committees and the Council in the articles of association or other constitutional documents
- set clear criteria for appointing representatives to the boards of arm's-length organisations, their required skills and experience, and any payments to board members
- agree clauses to terminate or review the delivery arrangement at the outset, taking into account the impact on services and their users, employees, and assets.

For Part 3 - Keeping it right, these include that Councils must ensure that Council representatives involved in ALEOs:

- are aware of how well Council objectives are being met by the ALEO
- carry out their scrutiny or management roles effectively, and take action on any shortcomings or under-performance
- are risk aware and satisfied that risks to the Council and the ALEO are identified and acted upon
- act quickly on potential conflicts of interest, including declaring interests and seeking advice
- take action to withhold funding or to review or terminate the agreement, particularly where services or public money are at risk
- take action where the intended objectives of the ALEO are not being met, or diverge from Council priorities
- periodically review their delivery arrangements to ensure that the best use is made of resources and that clear governance is in place
- review or wind-up ALEOs that are no longer active or effective, or contribute to the Council's aims
- ensure that they have the skills and training to undertake their role.

- 4.3 In addition, the report also includes two appendices that provide supplementary information for elected members and officers. These include a checklist of key questions (Appendix 1) to help them to consider and assess the key issues in respect of the management of ALEOs and identify where improvements can be made together with a toolkit (Appendix 2) that allows Councils to assess how well they ensure effective governance and accountability is maintained for services delivered through this method.

5 POLICY IMPLICATIONS

This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

The Chief Executive and Depute Chief Executive (Support Services) have been consulted on the content of this report.

7 BACKGROUND PAPERS

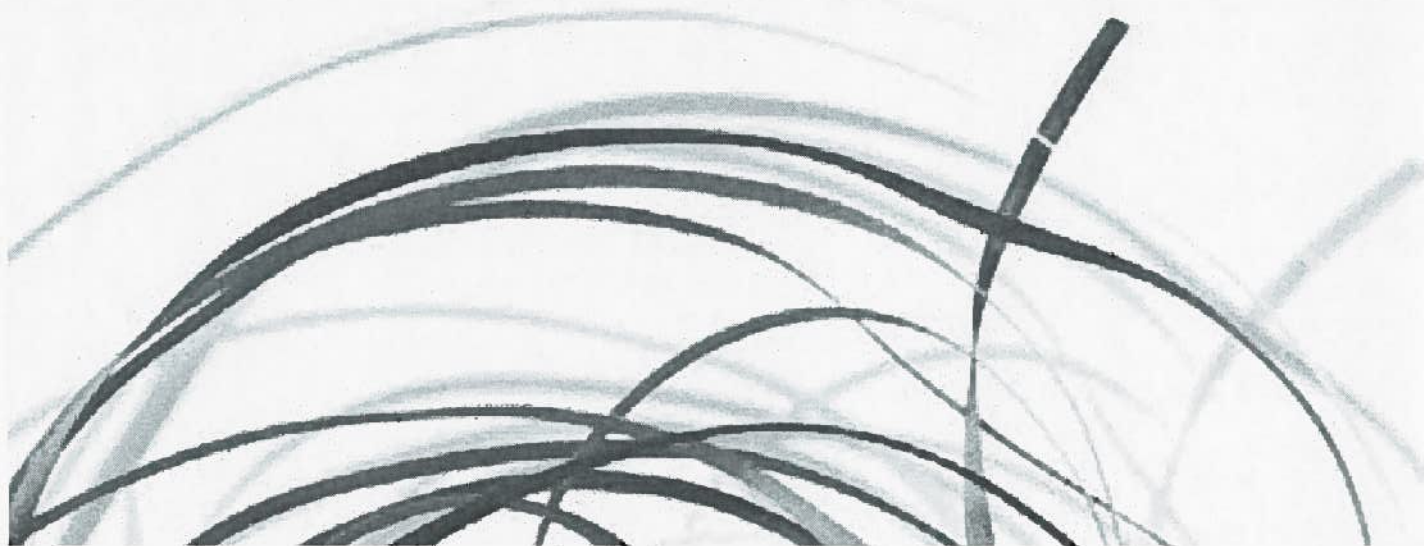
None.

**MARJORY M STEWART
DIRECTOR OF FINANCE**

11 AUGUST 2011

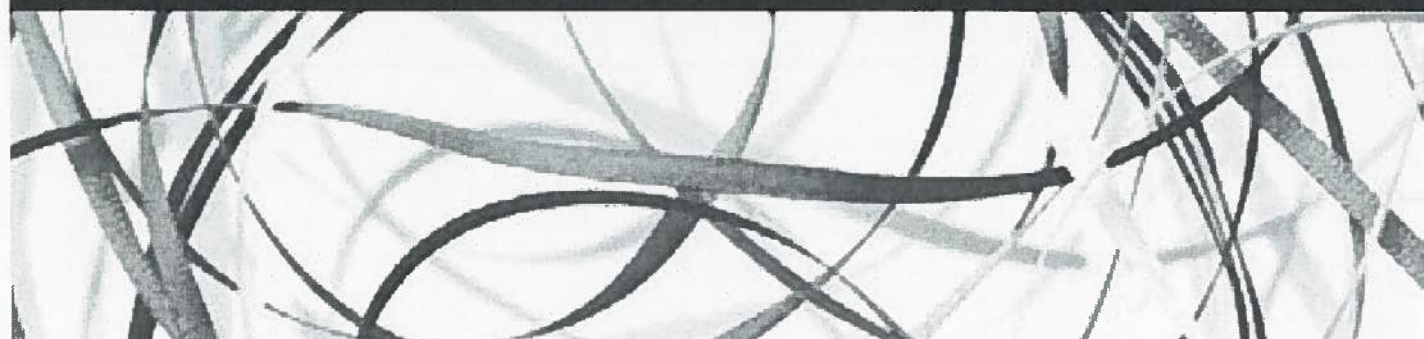
How councils work:
an improvement series for councillors and officers

Arm's-length external organisations (ALEOs): are you getting it right?



 **AUDIT SCOTLAND**

Prepared for the Accounts Commission
June 2011



The Accounts Commission

The Accounts Commission is a statutory, independent body which, through the audit process, requires local authorities in Scotland to achieve the highest standards of financial stewardship and the economic, efficient and effective use of their resources. The Commission has four main responsibilities:

- securing the external audit, including the audit of Best Value and Community Planning
- following up issues of concern identified through the audit, to ensure satisfactory resolutions
- carrying out national performance studies to improve economy, efficiency and effectiveness in local government
- issuing an annual direction to local authorities which sets out the range of performance information they are required to publish.

The Commission secures the audit of 32 councils and 45 joint boards and committees (including police and fire and rescue services).

Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the Auditor General for Scotland and the Accounts Commission. Together they ensure that the Scottish Government and public sector bodies in Scotland are held to account for the proper, efficient and effective use of public funds.

Contents

Introduction

Page 2

About our report

Page 3

Part 1. Setting the scene

Page 5

Key messages

ALEOs are now an established part of local government

Page 6

The 'following the public pound' principles provide the basis for sound governance

Page 7

Part 2. Getting it right from the start

Page 9

Key messages

Decisions to use ALEOs should be based on an options appraisal and sound business case

Page 10

Sound governance is needed from the outset

Conditions attached to the use of public funds should be clear

Page 12

Clarity on roles and responsibilities is vital

Page 14

Performance monitoring should be clear from the start, risk-based and proportionate

Page 18

Part 3. Keeping it right

Page 20

Key messages

The principles of Best Value apply equally to ALEOs, and need to be maintained

Page 21

Councillors and officers require ongoing advice and training

Page 23

Part 4. Key points for action

Page 24

Appendix 1. A tool for checking progress

Page 26

Appendix 2. Toolkit for improving the governance of ALEOs

Page 28

About our 'how councils work' series

The Accounts Commission seeks to support improvement in best value and resource management, recognising these as two key components vital to the successful delivery of council services.

The purpose of the 'how councils work' series of reports is to stimulate change and improve performance. We select topics based on the recurring themes and issues from our Best Value audit work, the work of local auditors and our annual overview report. We draw mainly on our existing audit work but supplement it with new audit work and other information.

This is the second report in the series. The first report examined roles, responsibilities and working relationships of elected members and council officers in achieving best value.



What have auditors found?

These boxes appear throughout this report and represent case studies from individual councils. They have been drawn from Audit Scotland audit reports. They are not key findings for all councils.

Introduction



ALEOs are arm's-length external organisations that can be used by councils to deliver services.



1. Increasing budget pressures and service demands present risks and challenges to councils and the services they provide. This requires councils and councillors to review their services and consider options that may better meet the needs of service users and citizens, and offer improved value for money.

2. One option may be to set up and fund an arm's-length external organisation (ALEO). Currently, councils use ALEOs to deliver a wide range of activities such as leisure services, economic development and property maintenance.

3. ALEOs may offer an alternative to more traditional 'in-house' or contract-based service delivery and usually take the form of companies or trusts. They are 'arm's-length' because the council retains a degree of control or influence, usually through a funding agreement, and 'external' because they have a separate identity to the council.

4. ALEOs by their nature are one step removed from council control and, as a result, governance and financial arrangements can be complex. There is a risk service users and citizens have less input and influence over how services are provided. There is also the potential for conflicts between the interests of the council and the ALEO.

5. ALEOs are now an established part of local government in Scotland and play an increasing role in service delivery. In the past decade, for example, the number of ALEOs set up to deliver leisure services has almost doubled.

6. The main drivers for using ALEOs are to reduce costs or to improve services. ALEOs may qualify for business rates relief, attract grants or may be able to trade to generate income. However, it is not just about money. ALEOs may offer

different and better ways of providing services and can make services more accessible. It is important that councils and councillors are clear about the anticipated benefits from using an ALEO to deliver services.

7. While the ALEO takes on responsibility for service delivery, the council remains responsible for ensuring that the ALEO uses the public funds the council provides to the ALEO properly and can demonstrate best value. In other words, the council remains accountable for the funds used to deliver public services, regardless of the means by which the service is delivered. Consequently, it is important for the council to be able to 'follow the public pound' to the point where it is spent. This requires well-thought-through governance arrangements from the outset and action to ensure those arrangements are applied effectively in practice.

8. Strong governance requires clear roles and responsibilities, both for those at the council responsible for monitoring the ALEO and for those asked to be a representative on the board of the ALEO. Representation in particular requires careful consideration. Councillors and officers serving on ALEO boards face challenges in finding an appropriate balance between their responsibilities to the council and to the ALEO.

9. Pressures on budgets mean that councils are looking at alternative ways of delivering services. This may lead to further and more innovative use of ALEOs and, for that matter, decisions to withdraw funding from existing ALEOs and to bring services back into council control. At the same time, ALEOs themselves face a challenging financial and operating environment. Councils need good information so they have early warning of difficulties and are ready to deal with any financial and service risks that may arise.

10. To date, our audit work has not highlighted widespread problems. But it has highlighted concerns over the management of ALEOs in specific cases, including situations where poor governance has resulted in risks to public money, service performance and the reputation of councils. There is also increasing public interest in ALEOs, particularly the impact on services and council finances where ALEOs fail to deliver. There has also been interest in staff recruitment practices in ALEOs and in payments to councillors who have taken up roles on the boards of ALEOs. These factors, along with the quickly changing local government context, confirm that the time is right for this report.

About our report

11. This is the second report in our 'how councils work' series. It is aimed at councils that are considering setting up ALEOs to deliver services, as well as those with existing ALEOs. It is designed to promote and encourage good practice in the way ALEOs are set up and operated. Our report will be of particular interest to officers and councillors who are responsible for monitoring ALEO performance or who serve on ALEO boards.

12. Our report sets out good practice in the way councils deliver services through ALEOs. It focuses on how councils establish ALEOs and maintain governance and accountability for both finance and performance. It highlights areas that work well and where improvement may be required.

13. Our report draws on our audit work across all 32 councils, including our Best Value audit work and reports that have highlighted particular concerns or issues arising from the use of ALEOs. We have reviewed council documentation and have drawn on survey work conducted in councils as part of recent performance audits.

14. We hope this report will stimulate discussion among councillors and officers that will lead to change and improvement. The report aims to support all councils by signposting readers to sources of information and guidance, and by providing examples from our audit work. We have also included checklists and other self-assessment tools that councillors and officers may find helpful.

Part 1. Setting the scene



ALEOs are an established part of local government. The principles of openness, integrity and accountability apply equally to ALEOs as to council-run services.



Key messages

- Councils are increasingly using ALEOs as an alternative way of delivering services at a time of significant budget reductions.
- Where appropriate, ALEOs can offer the potential for reduced costs, new sources of income and greater flexibility. However, there may also be increased risks.
- The 'following the public pound' principles continue to provide the basis for sound governance of ALEOs.

ALEOs are now an established part of local government

15. Councils decide the best way to deliver services to meet the needs of the communities they serve. Most commonly, councils provide services 'in-house' through their own departments and employees or through contracts with other public, private and third sector or voluntary suppliers. Councils can also create separate organisations to deliver services. The term, arm's-length external organisations, or ALEOs, is often used to describe such organisations.

16. ALEOs deliver council services, but do not operate within traditional council structures. They are 'external' because they have a separate identity to the council, and are 'arm's-length' because the council retains some control or influence, usually through a funding agreement (Exhibit 1).

17. Under an arm's-length arrangement, the delivery of a service or activity becomes the responsibility of a separate organisation. As such, the council loses direct control over the day-to-day management of the service. However, it remains

accountable for how public money is spent and the quality of services delivered. This association also means that there are ongoing financial and reputational risks for the council if things go wrong.

18. Public funds and assets may also move from the direct control of the council to the control of the ALEO. This can range from relatively small sums or, where an ALEO manages an entire service, large-scale payments and asset transfers. Council support for ALEOs ranges from grants to third sector organisations to payments to trusts set up by councils to manage all of their leisure and cultural facilities, for example. The ALEO may be a one-off to deliver a particular project or may be part of a large group involving holding companies and complex structures.

19. We have not sought to quantify the current number of ALEOs and what they spend because of the time and cost to councils and to us. However, a brief review of councils' accounts shows that the majority of the 32 Scottish councils operate ALEOs and that there are currently

around 130 major ALEOs in total. Councils typically operate between one and four ALEOs, although three councils operate 14 or more ALEOs. These figures do not include the many smaller organisations that receive some level of council funding which are otherwise independent of the council.

20. Councils consider alternative ways of providing services and ALEOs continue to feature strongly in the range of options considered. Our audit work indicates that the numbers and variety of ALEO arrangements has continued to grow. For example, our 2010 performance audit report, *Physical recreation services in local government*,¹ found that the number of ALEOs set up to provide leisure services has almost doubled in the last decade (Exhibit 2).

ALEOs can offer financial and other benefits

21. ALEOs can offer financial and operational advantages. Under current arrangements, charities, for example, can qualify for business rates relief. ALEOs can also have greater freedoms to trade, for example, by offering

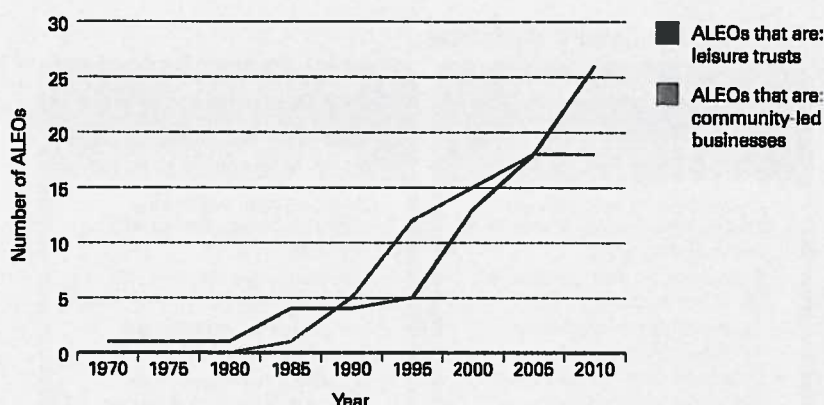
Exhibit 1

What are ALEOs and what do they do?

We define arm's-length external organisations as companies, trusts and other bodies that are separate from the local authority but are subject to local authority control or influence. Control or influence can be through the council having representation on the board of the organisation, and/or through the council being a main funder or shareholder of the organisation.

ALEOs can take many forms including companies limited by guarantee or shares, community enterprises, such as industrial and provident societies, trusts and Scottish Charitable Incorporated Organisations. Examples of the services they deliver include leisure, transportation, property development, and more recently, care services. ALEOs are often set up as non-profit making organisations such as charities to promote public benefit in areas such as health, education, recreation and equal opportunities.

Source: Audit Scotland

Exhibit 2**Growth in the use of leisure ALEOs**

Source: Audit Scotland

services to other public and private sector organisations and this can help them to attract grants and private sector investment. ALEOs can have more flexibility in deciding employee terms and conditions to meet their business needs. The financial and tax implications of ALEOs are complex and specialist advice is essential. Councils also have to be aware that the tax position may change if central government policy changes.

22. Councils have used ALEOs to deliver more routine activities, as well as more innovative projects. Examples include transport services, energy schemes, and property development companies. These can offer new sources of income but there can be related risks. There have been cases where councils have had to provide unplanned financial support to ALEOs and, in more extreme cases, have had to wind-up ALEOs and take responsibility for their services and financial commitments.

23. Councils should be clear about their aims before choosing the most suitable option for delivery. All delivery models have advantages and

disadvantages and councils should choose the optimum arrangement to meet their needs. Councils should be risk aware, but not risk averse; this requires them to be clear about the risks involved and to have a coherent strategy for managing them.

24. Exhibit 3 (overleaf) provides examples of different delivery approaches including the potential advantages and disadvantages commonly associated with them. In practice, combinations of these options are often used. For example, ALEOs can have trading companies as subsidiaries, or can contract areas of activity to private sector providers. Partnership working can also be a feature of all these delivery approaches.

25. In summary, ALEOs can bring financial and operational advantages. However, it is not always clear whether these are realised in practice or if they are sustainable over time. Councils need to review whether their ALEOs have achieved their intended benefits such as cash savings or improved customer satisfaction and, overall, assess whether they can

demonstrate value from the money and other resources provided to the ALEO.

The 'following the public pound' principles provide the basis for sound governance

26. ALEOs are not new and are an established part of local government. In 1996, the Accounts Commission and the Convention of Scottish Local Authorities (COSLA) published a Code of Guidance² in response to growing concerns about the implications for control and accountability arising from the use of ALEOs. The focus was on self-regulation and based on the premise that, to ensure public money is used properly, it must be possible to 'follow the public pound' across organisational boundaries.

27. The Code was published some time ago and since then there have been important developments in governance and professional practice – we refer to this elsewhere in this report. There have also been significant changes in local government legislation, including councils' responsibilities for Best Value and Community Planning.³ However, the six principles in the Code are as relevant today as they were when the Code was first published (Exhibit 4, overleaf).

28. The Following the Public Pound Code aims to ensure that the principles of openness, integrity and accountability apply equally to funds or other resources that are transferred to ALEOs. The Code received statutory backing in 2005⁴ and, as a result, councils are required to comply with the Code when they establish and deal with ALEOs.

29. The Code continues to provide the foundation for how councils should manage their relationships with ALEOs. Our *Following the Public*

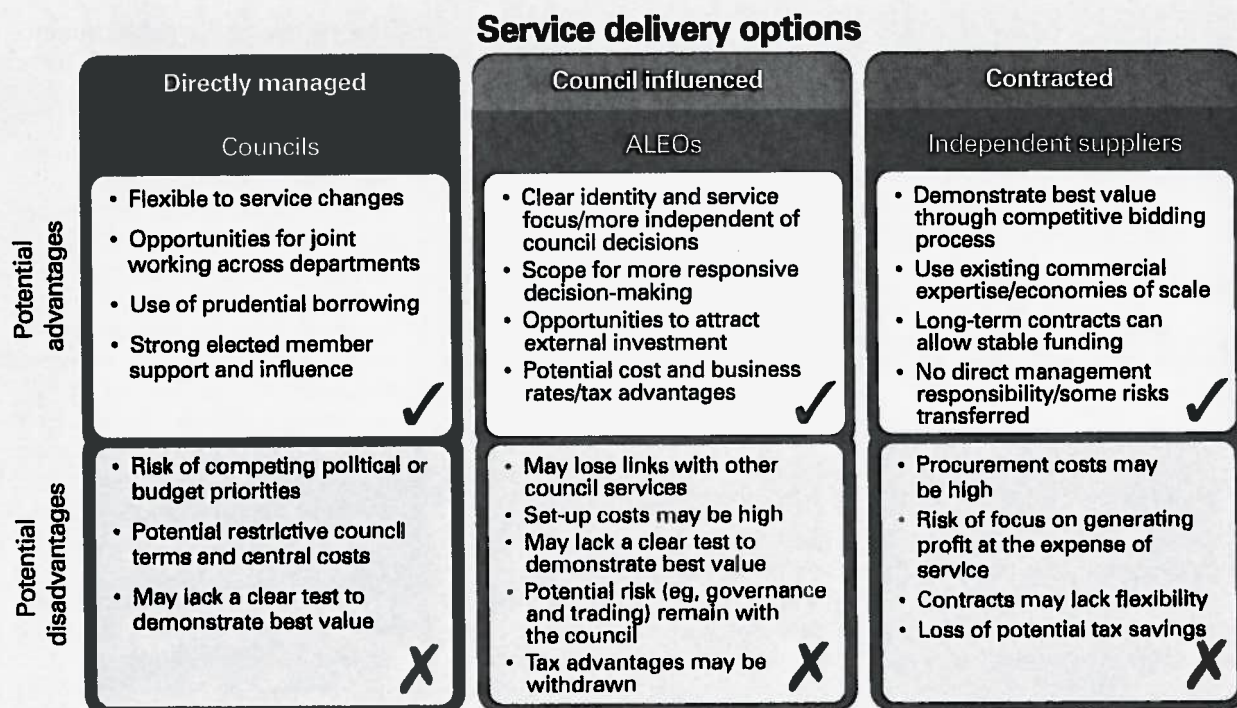
² Code of Guidance on Funding External Bodies and Following the Public Pound, Accounts Commission/Convention of Scottish Local Authorities, 1996.

³ The Local Government in Scotland Act 2003.

⁴ Direction by Scottish ministers under section 51 of the Local Government in Scotland Act 2003, June 2005.

Exhibit 3

Overview of delivery options and their potential advantages/disadvantages



Source: Audit Scotland

Pound report of 2005⁵ found that no council fully complied with the Code. The report recommendations included councils putting in place better monitoring of their ALEOs that is proportionate to the risks involved.

30. Our report explores what councils need to do to get this right from the start. We then go on to consider the steps councils need to take on an ongoing basis to keep things right, ie to ensure that ALEOs remain the best option and that governance remains fit for purpose. Keeping it right applies to new ALEOs and those where councils have an ongoing involvement.

Exhibit 4

Following the public pound principles

The principles of openness, integrity and accountability apply to councils in their decisions on spending public money. These apply equally to funds or other resources which are transferred to ALEOs. The Code sets out six principles that require councils to:

1. have a clear purpose in funding an ALEO
2. set out a suitable financial regime
3. monitor the ALEO's financial and service performance
4. carefully consider representation on the ALEO board
5. establish limits to involvement in the ALEO
6. maintain audit access to support accountability.

Source: Audit Scotland

Part 2. Getting it right from the start



Councils must have clear reasons for using ALEOs. They must understand the impact on people who use services. Clear roles and responsibilities and effective monitoring are essential.



Key messages

- Any decisions to use an ALEO to deliver services should involve an appraisal of the options available and a sound business case, using expert advice when necessary.
- Governance for ALEOs can be complex; strong and effective governance is required from the outset.
- Councils should specify the business practices and standards they expect the ALEO to observe.
- Clarity about roles and responsibilities is vital.
- Monitoring of ALEOs should be risk-based and proportionate.

Decisions to use ALEOs should be based on an options appraisal and sound business case

31. Best Value requires councils to make the best use of the resources available to them. This includes identifying the best way of delivering services. It follows that councils should be able to demonstrate the benefits of any decision to create an ALEO, or to continue service provision through an existing ALEO.

32. Councils need to assess the options that best meet their objectives. This requires an understanding of the options available including in-house provision, partnership and contracting options, as well as the option to use an ALEO if appropriate. It also requires rigorous analysis and understanding of the pros and cons of each option.

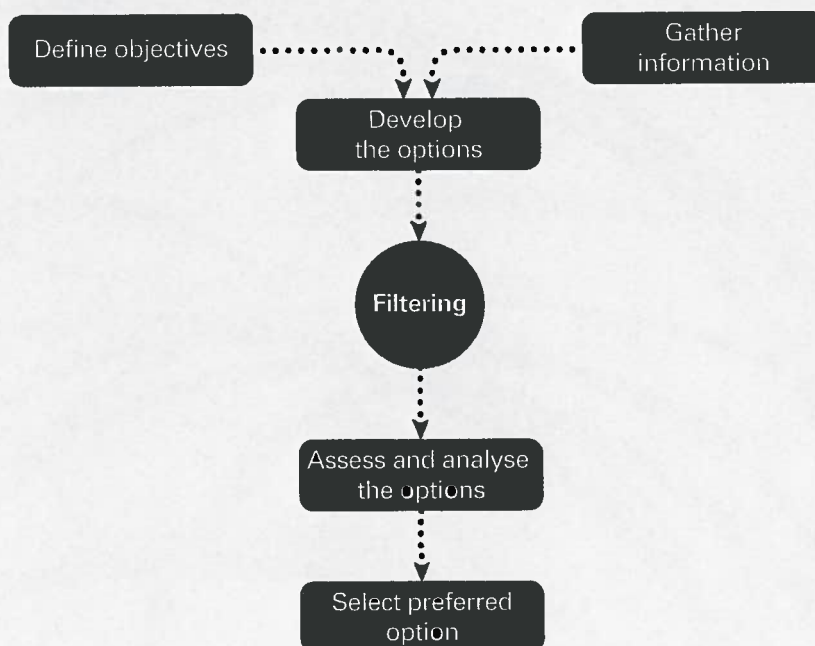
33. Any decision to set up an ALEO should flow from an options appraisal. However, our Best Value audit work has shown that many councils do not have a well-developed approach to options appraisal.

34. There is a considerable amount of guidance available on options appraisal and this report does not attempt to cover the process in detail. Exhibit 5 sets out the basic stages of a typical options appraisal; these principles apply equally when considering new ways of service delivery that may include delivery through an ALEO.

35. Options appraisal should consider the risks involved, the financial implications and governance arrangements. Having good-quality information on costs that allows valid comparisons between the options is essential.

Exhibit 5

Basic stages of an options appraisal



Source: *Capital Planning and Option Appraisal – A Best Practice Guide for Councils*, CIPFA Local Government Directors of Finance, October 2006



What does it look like in practice?

- Being clear what your aims and objectives are.
- Knowing the market and identifying all the options.
- Involving stakeholders such as service users and the local community.
- Being clear about the risks associated with each option, both long and short term.
- Being objective and impartial when assessing the options.

36. Options appraisal also requires good information about what service users and communities need and the potential impact on them if there is a change in how services are delivered. The ability of citizens and service users to influence the way councils provide services flows from good community engagement and is a fundamental principle of Best Value. This is particularly important in the case of core services such as social care on which vulnerable people are dependent.

37. Councils considering the use of ALEOs should assess the impact of ALEOs on service users and citizens in general. This includes how community views are represented, including the role of councillors.

38. Councillors need to oversee options appraisals that involve potential major shifts in how services are provided. They have a key role, for example, in agreeing the broad objectives of the options appraisal, in the appraisal process itself or in scrutinising the process and emerging proposals.

39. Rigorous options appraisal requires expertise in legal, business and operational matters and the process can be expensive and time-consuming. Councils need to consider whether they have sufficient expertise in-house and may need specialist consultancy support, eg in relation to charity law and tax-related matters, such as VAT. Councils should also learn from their own and other councils' experience of using ALEOs and factor that in to the options appraisal.

40. Exhibit 6 provides examples of the governance and operational questions that councils need to ask when considering service delivery options and preparing a detailed business case for their preferred option.

Exhibit 6

Examples of governance and operational issues to consider in options appraisal

Legal and governance	Business and operational
Is there a clear statutory basis for undertaking the activity?	Does the activity fit in with the council's objectives?
How will governance work – including the means of council control and representation?	What are the service implications, eg quality, access, marketability, pricing?
How will the ALEO be accountable to the community and the service user?	How will services users be involved and customer satisfaction measured?
How will the council demonstrate that the ALEO offers best value and assure that it accounts for all public money provided to the ALEO?	What are the financial implications, eg taxation, treatment of profits, ability to attract investment and residual liabilities for the council?
What are the implications of EU and other procurement law, for example on the award of the contract or service delivery agreement?	What is the payback time, allowing for initial set-up costs?
How will obligations including equal opportunities, best value and sustainable development, data protection and freedom of information be observed?	Are there benefits in sharing services with other councils or partners?
How will the delivery method be reviewed, and what is the basis for withholding funds or terminating the arrangement?	What will be the impact on demand, including the council's ability to subsidise any increase?
How will council employees and assets be treated including transfer arrangements and pensions?	How will flexibility or changes to delivery be allowed for?
What are the statutory financial reporting and auditing requirements?	What are the operational risks, including future changes in legislation or the marketplace?
	What management information will be shared by the ALEO to demonstrate financial control and best value?

Source: Audit Scotland



Want to know more?

- *Healthy Competition – How councils can use competition and contestability to improve services* (Audit Commission)
<http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/healthycompetition.aspx>
- *The Green Book Appraisal and Evaluation in Central Government* (HM Treasury)
http://www.hm-treasury.gov.uk/d/green_book_complete.pdf
- *Improving strategic commissioning in the culture and sport sector: Guidance paper 2 Options appraisal, the business case and procurement* (Local Government Improvement and Development – formerly IDeA)
<http://www.idea.gov.uk/idk/aio/19049726>
- *Making Choices: Volume 2: A Practice Guide to Best Value, Procurement and Competitiveness* (Scottish Government)
<http://www.scotland.gov.uk/Resource/Doc/158566/0042999.pdf>

Exhibit 7

What do we mean by governance?

Governance is about how local government bodies ensure that they are doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.

It comprises the systems and processes, and cultures and values, by which local government bodies are directed and controlled and through which they account to, engage with and, where appropriate, lead their communities.

Source: *Delivering Good Governance in Local Government*, SOLACE/CIPFA, 2007

Sound governance is needed from the outset

41. Governance is about clear direction and control and is central to the success of all organisations. It is important that councils meet good governance standards, for example, by demonstrating strong leadership, effective community engagement and robust scrutiny (Exhibit 7).

42. Delivering projects or services through ALEOs is likely to make governance more complex. However, the same principles of good governance apply and councils will be best placed to safeguard their interests where they ask fundamental

questions and act on them at the outset. Key questions which councils and councillors need to ask themselves include:

- Are we clear about our overall expectations of the ALEO?
- How well do we understand the financial commitment and risks flowing from the decision to set up and support the ALEO?
- How do we ensure that governance arrangements in the council and the ALEO are sound and that those with an active role receive adequate training and advice?

- How will we safeguard our interests such as assets and other resources made available to the ALEO?

- How will we know how well the ALEO is doing, through our scrutiny of both service and financial performance?

43. While the use of arm's-length arrangements can offer innovative ways of delivering services, strong governance arrangements need to be in place to ensure that ALEOs contribute effectively to the delivery of the council's corporate objectives and priorities. It is vital to establish sound governance from the outset. We have seen councils struggle to exert good and effective governance well after the ALEO was set up and, as a result, services and public funds were exposed to risk. This is particularly important where ALEOs are set up to deliver fast-moving, innovative projects.

44. The fact that an ALEO may be a separate organisation from the council is unlikely to be at the forefront of service users' and taxpayers' minds. One consequence of using more complex delivery structures involving ALEOs is that the public may be less clear about who is responsible for services and, for example, who they should complain to if they are unhappy with the services they receive. Maintaining transparency is a key objective in good governance.

Conditions attached to the use of public funds should be clear

45. The funding relationship between councils and ALEOs is typically set out in a service or management agreement. These should set out what is expected from the arrangement, specifying the money and other resources the council will provide and what it expects from the ALEO in return. The agreement should include criteria for the council withholding its funding, or for terminating its relationship with the ALEO.

46. The written agreement should also cover the accounting and audit requirements. Accounting must follow the legal requirements for company or charity financial reporting, and the agreement should state the arrangements for audit access to records held by the ALEO. Many ALEOs include an audit committee as part of their internal governance structure. These should be chaired by a non-executive member and ensure that the board is aware of, and acts on, risks, and other financial and performance information.

47. As part of the annual audit, external auditors appointed by the Accounts Commission review compliance with accounting standards and the Commission/COSLA Code. The Commission cannot appoint auditors to ALEOs but the auditors the Commission appoints to councils have the right of access to information for the purpose of their audit.

48. Beyond finance, there is also scope for the agreement to cover other aspects, to ensure that business practices and standards councils expect in the direct delivery of services are observed by ALEOs in spending public money (Exhibit 8).

49. ALEOs are seen as an extension of the council and there are potential reputational risks to the council from its association with the ALEO. Consequently, where business practices in the ALEO fall below the standards expected from the council itself, or where there are significant governance failings, this has the potential to affect stakeholders' views about the council as a whole.

Councils should set a clear policy for any payments to board members

50. We consider the question of representation on boards in the following section. However, in attaching conditions to funding at the outset, councils should also set a clear policy and rationale for any payments to board members. The payment of councillors as board members can be a contentious issue, and there have



What have auditors found?

Two examples of what the auditors found in individual councils:

- The council did not establish any clear limits for its involvement in the project and did not appear to have developed any contingency plans to be used in the event of a significant change in circumstances.
- Corporately, the council did not establish effective governance. As a result, it was not well placed to deal with key issues when they emerged and was not aware of the significance of the company's decision to pursue a high-risk service-delivery option.



What does it look like in practice?

Auditors have noted good practice where a council put restrictions on the payment of council officers or elected members who are non-executive directors of arm's-length companies or trusts. Its policy states that such duties should generally be regarded as part of their role of office and will not entitle the post holder to additional payment other than appropriate expenses incurred in the course of board business.

Exhibit 8

Attaching conditions to the funding arrangements

In agreeing funding arrangements, councils should consider conditions for the ALEO that align with their own legal requirements and policies. As a minimum, they should address:

- equalities
- sustainability
- recruitment and employment practices
- data protection and handling
- freedom of information principles
- standards and behaviour
- arrangements for engaging with citizens and service users.

Source: Audit Scotland

been examples where ALEOs have faced criticism for amounts paid to councillors to attend board meetings.

51. There is potential conflict of interest, or the appearance of a potential conflict, if councillors receive payments directly from ALEOs. In

such circumstances it can be difficult to demonstrate the principles of good governance.

52. Whether councillors receive payments from the council as a result of their role on ALEO boards is a policy matter for councils to



What have auditors found?

An example of what the auditors found in a council:

- There are no criteria set for the selection of individuals to sit on company boards. It is not clear how the council, on an ongoing basis, decides whether this representation fulfils the council's objectives.

decide. However, in terms of good governance, the determining factors should be the substance of the councillors' role rather than the fact that the position happens to be on an ALEO board as opposed to, for example, a council committee.

53. We note that a similar point was made by the Scottish Local Authorities Remuneration Committee (SLARC), an independent advisory body responsible for making recommendations to Scottish Ministers on the salary and allowances paid to councillors. As part of its 2010 review⁶ SLARC considered the appointment of elected members to the boards of companies or to organisations established, owned or funded by local authorities. SLARC noted that additional payments from arm's-length organisations to councillors for sitting on a board undermines the principles of the existing remuneration scheme for councillors. It has set out a number of recommendations including that no additional remuneration other than that provided in the current remuneration scheme should be paid to councillors for serving on such bodies.

Clarity on roles and responsibilities is vital

Representing the council's interests

54. It is common practice for councils to nominate councillors or officers for positions on the boards or governing bodies of ALEOs. Councillors or officers as board members can have

an important role in the governance of the ALEO, for example, in overseeing how the ALEO is managed. Where this works well, it can provide important links between the council and the ALEO and can help ensure that the board acts in the interest of the council as major shareholder, for example. It also recognises the importance of the council's community leadership role and provides an opportunity for council representatives to ensure the ALEO is being properly run and that council funds are being used effectively.

55. Councils should set clear criteria for the skills and experience required of board members. They should also have a clear and transparent selection process to make appointments to boards.

56. Councils need to consider very carefully the question of representation. Having established that they want representation, councils need to assess the advantages and possible risks. They then need to consider the skills, expertise and qualifications required to carry out the representation role effectively. Depending on the services that the ALEO will provide, it may be appropriate for the ALEO board to reflect specific interests. For example, councillors with a background in sport or leisure may be well placed to represent their council on the board of a leisure trust. Specifying criteria will help ensure that the appointment process is transparent and will help support clarity about roles and responsibilities.

57. Taking on a direct role in the ALEO brings with it new responsibilities, including legal duties. For example, councillors and officers serving as directors of an ALEO that is constituted as a company assume personal responsibilities under the Companies Acts. They owe a duty to shareholders and creditors of the company and may be personally liable if the company engages in wrongful trading or if any other offence arises in the company. As we say in our report on physical recreation services,⁷ the companies' legislation was not framed specifically to the circumstances of ALEOs and councillors, but it still applies.

58. Similarly, councillors and officers serving as trustees on charities must observe the legal provisions which apply to charities and trusts. Crucially, officers and councillors need to be aware of the risks and where to get advice if they need it. The Office of the Scottish Charity Regulator (OSCR) *Who's in Charge* guidance⁸ sets out the duties of charity trustees including the need for clear responsibilities and behaviours to ensure the charity has the required degree of independence and provides public benefit through its activities.

59. Councils must consider representation and take steps before the ALEO is established. Key issues are:

- to ensure the appropriate composition of the board to bring the mix of skills and experience required to govern the organisation
- to set out why the council will be represented on the ALEO board and what is expected of individuals from the council who are asked to sit on the ALEO board
- to make clear how those individuals will be supported in the role.

⁶ 2010 Review of Remuneration for Local Authority Councillors, SLARC, March 2011.

⁷ Physical recreation services in local government, Audit Scotland, October 2010.

⁸ *Who's in Charge*, The Office of the Scottish Charity Regulator, March 2011.

- to consider how service users and communities will be represented, including the role of councillors

Managing potential conflicts of interest

60. Representation on the boards of ALEOs by its nature introduces the potential for conflict of interest for individuals who have roles in both

the ALEO and the council. Members and officers who act as directors of companies have difficult obligations to balance. For example, councillors have a duty under the Code of Conduct to act in the interests of the council. However, at the same time, as company directors they are required to act in the interests of the company. It is important that potential conflicts

are thought through at the outset, in particular to avoid any situation where conflicts become irreconcilable (Exhibit 9).

61. Some roles may be incompatible or can pose real risk to governance and accountability. For example, a councillor or officer who scrutinises an ALEO on behalf of the council, or makes funding decisions affecting an ALEO, should not be a board member of the ALEO. More generally, the dual roles may mean that individuals have access to council information that may not be appropriate to disclose at ALEO board meetings – and vice versa, in respect of commercially sensitive information that is available as a board member of an ALEO. Councils may avoid this situation by specifying the information they require, as part of the funding agreement established at the start.

62. In practice, this heightens the need for councillors to be aware of the potential for conflicts of interest. Where councillors also serve as members of the ALEO they should be clear that they continue to have a responsibility to the council. This goes beyond simply declaring an interest and withdrawing from council discussions about the ALEO; they need to anticipate the nature of the agenda item and likely deliberations and decide what action they should take, seeking advice from officers where appropriate.

The councillor role

63. Councils often nominate councillors to contribute to the work of ALEOs. This can involve councillors taking a position on the board of the ALEO, so it is important that he or she is clear from the start what this different dimension means.

64. The first report in our 'how councils work' series⁹ explored roles and responsibilities in councils in the widest sense, but also reflected on

Exhibit 9

Competing responsibilities

The Councillors' Code

Duty – You have a duty to act in the interests of the council as a whole and all the communities serviced by it.

Appointments to partner organisations – If you become a director of a company as a nominee of the council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you as between the company and the council. In such cases it is your responsibility to take advice on your responsibilities to the council and to the company. This will include questions on declarations of interest.

Source: *The Councillors' Code of Conduct*, Scottish Government, December 2010

Guidance for Charity Trustees (OSCR)

Where a charity trustee is faced with a conflict of interest between the interests of the charity and those of a person or organisation responsible for their appointment as a charity trustee, the interests of the charity must come first. The charity trustee must act in the interests of the charity to which they have been appointed, not in the interest of the person or organisation which appointed them, for example a local authority or another charity.

If in relation to a particular issue the conflict of interest is irreconcilable, then the charity trustee in question must make this known to the other charity trustees, and not take part in any discussion or decision-making on the issue.

Source: *Guidance for Charity Trustees*, OSCR, June 2009

The Companies Act

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. This applies in particular to the exploitation of any property, information or opportunity.

Source: *The Companies Act 2006*



What do councillors say?

Councillors serving on the boards of ALEOs gave different views about the role involved, pointing to the need for more clarity:

"My role is to see where the council money is going, what it's used for, and to ensure that policies are followed."

"I'm there to represent the council – to take the line of the council – I'm not there in my own right."

"I am representing the council to make sure that things are done in accordance with council policy and to make sure that the money is spent as it should."

Source: Roles and working relationships: are you getting it right?, Audit Scotland, August 2010



What have auditors found?

Three examples of what the auditors found in individual councils:

- The main concern arising relates to the actions taken by council staff following the resignation of the management committee. While this may have been in good faith and in the interests of maintaining the service which the ALEO was set up to deliver, they effectively assumed management responsibility for the ALEO. This was a wholly inappropriate role for council officers to adopt. It is important that councils and their officers are clear about their respective roles and responsibilities in dealing with any ALEO.
- Officers were not clearly aware of their responsibilities and relevant monitoring procedures. Where specific responsibilities were assigned, including maintaining a watching brief to represent the council's interest, there is little evidence to suggest that these roles were delivered effectively.
- There was a potential for conflict of interest arising from a lack of appropriate separation between the responsibilities of council officers and the advisers to the company. For example, an officer became involved in the financial affairs of the company and was appointed company treasurer, resulting in conflict of interest and blurring the boundaries between the council's finances and those of the company.

the specific circumstances which apply when councillors and officers are required to become board members of ALEOs.

65. As part of that work, we spoke to a sample of councillors from across six councils. Most of those we spoke to who are appointed to an external body said they felt confident in their role, through experience or by drawing on support from council officers and other board members.

66. Despite this confidence, councillors said they were on the board to represent the council and its best interests, which suggests they may not be clear about what the role fully involves, such as the new and additional responsibilities attached to being a trustee or a member of a company board.

67. Those who did not feel confident in the role said they were unsure about what is expected of them when they were first appointed. Part 3 of

our report considers the need for ongoing advice and training for council representatives working with ALEOs.

68. Elected members have a unique perspective and can draw on their deep understanding of the needs of the communities they serve in their work with ALEOs. This can help ensure that services provided by the ALEO are consistent with the council's overall aims, and align with local need. However, it may be possible to bring these advantages into the ALEO without the legal responsibilities attached to being a director, trustee or member of a board. Councillors could, for example, serve on a subcommittee of the ALEO, in an advisory capacity, or take on the role as an observer or adviser that would not require formal membership of the ALEO. Where councils pursue this option they should ensure that responsibilities are clear and seek advice about any wider implications arising from such a role.

The officer role

69. Statutory officers in councils have specific duties as set out in legislation and discharge their role as part of wider responsibilities in their councils. They have an important, independent role in promoting and enforcing good governance and for making sure that councils comply with legislation. In summary:

- The Head of Paid Service (the chief executive) is responsible for all aspects of the management of the council. Together with councillors, he or she is responsible for promoting good governance.
- The Chief Financial Officer (the director of finance or equivalent) is responsible for the financial affairs of the council.
- The Monitoring Officer (the head of legal services or equivalent) is responsible for advising the

council about the legal position of proposed actions.

70. Each of the statutory officers' responsibilities extends to cover their council's governance arrangements for its interests in an ALEO, in setting up the ALEO and monitoring its performance. Guidance on the Chief Financial Officer's role, for example, sets out what is expected of him or her in relation to ALEOs (Exhibit 10).

71. Lines of accountability can become less clear where an officer is involved with an ALEO. Where council officers take an executive, or operational role in an ALEO such conflicts can be avoided by using secondments. The officer will then be an employee of the ALEO and responsible solely to the ALEO board. In the specific case where a senior officer is appointed to the board of an ALEO he or she will assume new responsibilities that change the nature of his or her ongoing working relationship with the council's chief executive.

72. Council officers are often required as part of their duties in the council to oversee the council's interests in the ALEO or to provide support in other ways. This can help to safeguard the council's interests and to share expertise. However, officers need to be clear about the role and its limitations. In particular, they must avoid becoming too close to the ALEO or finding themselves in a position where their responsibilities to the council are compromised. For example, an officer who oversees the ALEO's finances on the council's behalf should not take on a formal financial management function in an ALEO.

73. Liaison involving officers may provide the opportunity for oversight without the need for direct representation on the ALEO's board. Some councils use designated officers to manage and maintain their relationship with ALEOs. As these officers are not board members they can protect the council's interests

without any potential conflict of interest. The officers have a monitoring role and attend company or board meetings as observers, keeping up to date on company operations and performance. These link officers should be sufficiently

senior to highlight significant risks and issues to the council and to ensure that appropriate action is taken. However, arrangements such as these do not replace the need for effective performance reporting to the council.

Exhibit 10

The role of the chief financial officer in relation to ALEOs

"Consistency of standards and transparency in financial activities are essential. In this context, CIPFA's view is that the statutory role of the chief financial officer does not stop at the boundaries of the local authority but extends into its partnerships, devolved arrangements, joint ventures and companies in which the authority has an interest."

Source: *The role of the chief financial officer in local government*, CIPFA, 2010



What does it look like in practice?

An example of good practice from an individual council:

- The council has decided that no officer should hold a trustee or directorship position with any of the ALEOs the council engages with. This was based on the potential for conflicts of interest to arise between an officer's responsibilities to the council as an employer and that officer's responsibilities and personal liability when appointed to an outside body. The council saw a continued role for councillors on the boards of ALEOs, but recognised that councillors must be very clear in their responsibilities.



Want to know more?

- *Code of Guidance on Funding External Bodies and Following the Public Pound* (Audit Scotland)
http://www.audit-scotland.gov.uk/docs/local/2003/hr_040311_following_public_pound.pdf
- *Code of Conduct for Councillors* (Audit Scotland)
<http://www.scotland.gov.uk/Publications/2010/12/10145144/12>
- *Delivering Good Governance in Local Government* (SOLACE/CIPFA)
http://www.cipfa.org.uk/panels/corporate_governance/good_gov_briefing.cfm
- *Guidance for Charity Trustees* (Office of the Scottish Charity Regulator)
<http://www.oscr.org.uk/CharityTrusteeDuties.stm>

Performance monitoring should be clear from the start, risk-based and proportionate

74. Performance management is the process of managing and improving activities using good management information in areas such as customer satisfaction, risks, and costs. Councils should consider the arrangements for performance monitoring before the ALEO is operational. Our audit work has found scope for improvement in performance management in councils generally. This includes the way councils monitor services delivered through ALEOs.

75. Councils should set clear objectives for services delivered through ALEOs and put appropriate monitoring systems in place, including tailored performance indicators. The council should have an overview of how well ALEOs are meeting their objectives, while the ALEOs themselves should also monitor more detailed day-to-day operational issues. Mechanisms should be in place to identify and act on under-performance including trigger points to review the delivery agreement.

76. Performance monitoring should be proportionate to the scale of the activity and the risks involved. Our audit work found that councils tended to focus on the financial position of ALEOs, often relying on annual audited accounts. However, these are often available long after a matter of interest to the council has emerged. We have recommended that councils do more to monitor performance, including regular financial reporting, and service outcomes.

77. Councils are required under the Accounting Code to produce group accounts, which draw together the council's financial interests in organisations in which it has interests and control. The Code sets out the circumstances when the degree of influence or control requires organisations to be included in the



What does it look like in practice?

As an example of good practice, one council requires its ALEOs to:

- provide the council with appropriate information and assistance to monitor service performance including risks
- provide quarterly reports on financial and operational performance to council-nominated officers
- provide a twice-yearly performance report to council dealing with Key Performance Indicators (KPIs)
- submit annual performance report to council on financial and operational performance, service satisfaction and board member training
- annually review and agree KPIs and performance measurement framework.



What have auditors found?

An example of good scrutiny practice in one council:

- The council has an external governance and scrutiny committee that is responsible for scrutinising the performance of the council's ALEOs.
- The committee's scrutiny activity includes performance, risks, financial management, partnership working, contractual compliance and compliance with equalities obligations.
- It also receives reports on themes common across the ALEOs including service interdependencies, complaints handling and customer care, audit reporting, and absence management.
- The committee's ongoing work programme will examine the 'value added' from ALEOs and will review proposals for maintaining service performance and quality in the current financial conditions.

group; these organisations will often include ALEOs. The group accounting process aims to ensure that councils provide a true and fair picture of the extent of their activities. It also provides an opportunity to look across the group at the overall asset and liability position and at how ALEOs feature in the group.

Risk management

78. Service delivery through ALEOs can involve greater risks. This can be due to more complex governance structures, the financial environment in which they operate, or because of the type of service they deliver. It is important that councils are risk aware and have systems in place to monitor and manage risks. This

includes financial, technical, business, and legal risks. Councils must also be aware that where ALEOs run into financial difficulties they may be liable for any losses incurred either as guarantors, or as a result of some other obligation.

79. Our work, including Best Value audits, has shown that risk management is generally not well developed in councils. We have recommended that councils regularly review their risk exposure across arm's-length organisations. Councils should be aware of the potential risk to their strategic priorities posed by each individual ALEO.

80. Councils' risk registers should cover all activities delivered by ALEOs. Each ALEO will have its own particular risks. These will depend on the type and size of the organisation, the level of funding, the type of service provided, and its client group. Lower levels of expenditure can be relatively high risk due to the nature of the services they provide. Conversely, higher expenditure areas may not have such high operational risks, but councils should regularly monitor them as the impact of failure on council finances and service users would be substantial.



What have auditors found?

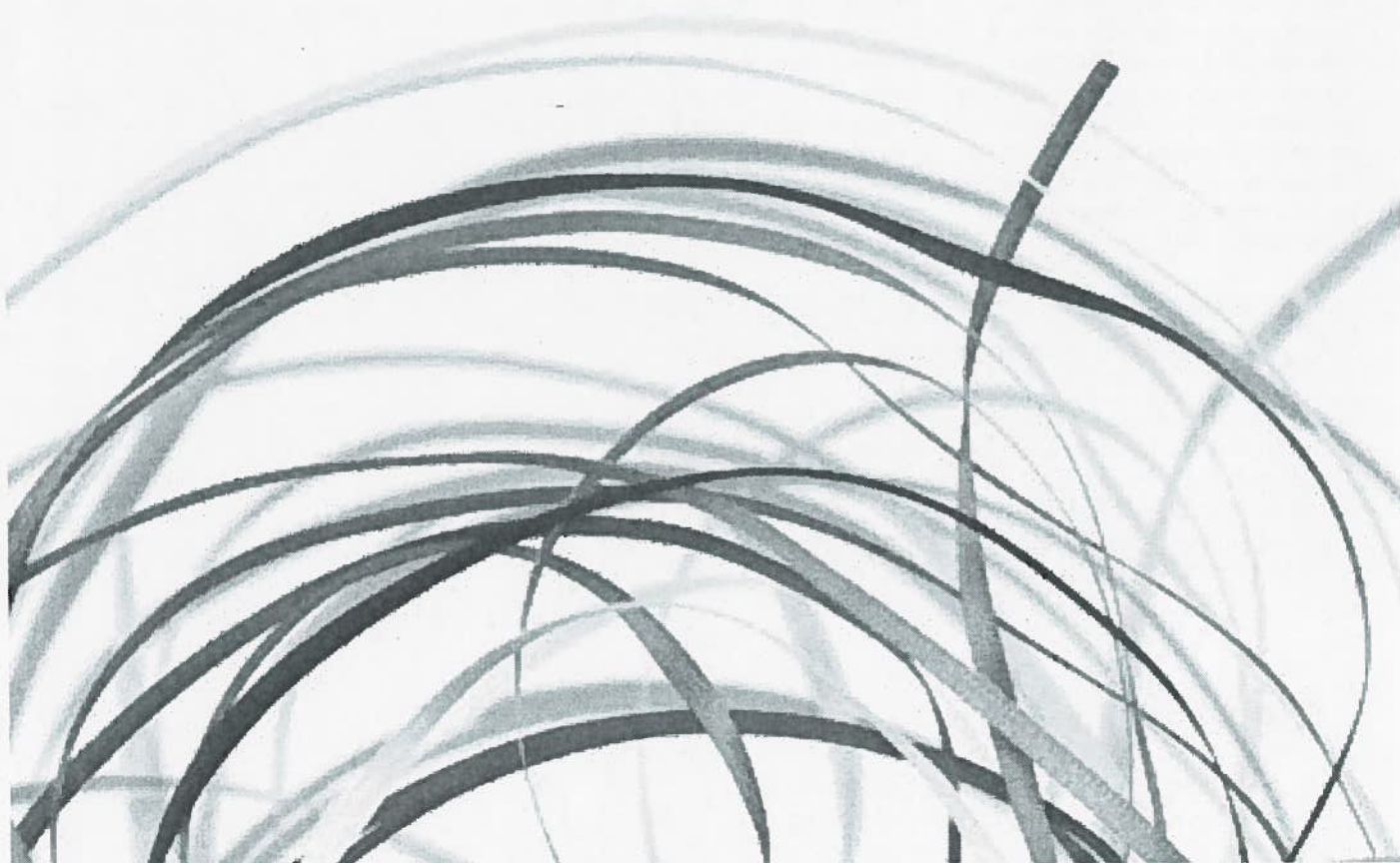
Good practice in one council involved putting in place increased scrutiny of a trust that was under-performing. The committee overseeing the trust was provided with additional performance information that assured it that improvements were being made. This highlights the need for councils to have a strong risk awareness and to be informed of how well ALEOs are performing on an ongoing basis.



Want to know more?

- Audit Scotland's risk management Best Value toolkit
<http://www.audit-scotland.gov.uk/work/toolkits/>
- A range of tools and guidance materials are available on the CIPFA website:
<http://www.cipfa.org.uk/>
- The HM Treasury's guide to risk management principles
http://www.hm-treasury.gov.uk/d/orange_book.pdf

Part 3. Keeping it right



Councillors and officers must be aware of how ALEOs perform and take prompt action when required. They must ensure they have the skills and knowledge to carry out their role.



Key messages

- Councils need good-quality monitoring information of ALEOs so they are aware of their finances, risks and performance. Information should be current to allow prompt action to be taken.
- Councils should periodically review their ALEOs to ensure they remain the best option for service delivery, and to ensure effective governance is in place.
- Councils should decide the trigger points for reviewing or terminating the delivery agreement, and take prompt action where required.
- Ongoing training and guidance should be provided so that councillors and officers involved in any capacity with ALEOs have the skills they need to undertake their duties.

The principles of Best Value apply equally to ALEOs, and need to be maintained

81. Getting the set-up and related arrangements for ALEOs right from the start is vital. It is equally important to make sure that the arrangements remain fit for purpose and remain effective in changing circumstances. This part of our report is also relevant where councils already use ALEOs to deliver services.

82. As with council-run services, ALEOs should be able to demonstrate Best Value, and effective systems for performance management and review are an important part of this. The toolkit in Appendix 2 brings together good management practice that applies in managing ALEOs and key steps necessary to move from basic to more advanced practices.

83. Councils need to be vigilant and aware of risks affecting the ALEOs that they fund. This applies equally

to members of ALEO boards and to councillors with a role in the council committees that oversee ALEOs. Councillors and officers should actively challenge how well ALEOs provide value for money and offer improved services for users. This requires them to have sufficient information on the ALEO's financial position, performance and risks.

84. Council representatives should also be aware of ongoing governance risks such as the potential for conflicts of interest. Conflicts are less likely where the objectives of the ALEO and the council are consistent and clearly defined. The situation can arise where these interests diverge and the actions of one organisation can be at odds with the other. For example, if an ALEO has discretion to alter the nature of the services it provides or its pricing policy, this may affect the uptake of services. Council and ALEO representatives must remain vigilant to ensure that the organisations continue to operate in line with their intended objectives.

85. Effective monitoring is especially important in the current financial environment where quick action may be required to protect services and the council's interests and reputation. Performance information should be current and meaningful to allow the

council providing the funding to take prompt action when issues arise. Reporting limited to annual financial statements or a narrow set of measures is not sufficient. Councillors should draw attention to any gaps in the information they receive to ensure that they can undertake their scrutiny role effectively.

86. Our physical recreation study found instances where councils only reported the performance of sports and physical recreation ALEOs to committee intermittently or not at all. In some cases, council officers received performance reports, but did not report performance or significant issues to committees. The study found that a significant proportion of councils monitored performance through very narrow statutory performance indicators. This is despite significant funding and the scale of the leisure activities involved.

87. Council nominees on boards have indicated to us that they can generally balance their roles with the council and an ALEO. However, in practice it is not always straightforward and conflicts of interest can arise that can make it difficult for councils to govern their ALEOs effectively.



What have auditors found?

In one council the situation arose where:

- The council and its partners created an arm's-length company to manage a small group of historic properties to support tourism in the area.
- The company ran into financial difficulties and the board, which included councillors, took the decision to close down some of these tourist attractions. This decision was not reported to the council despite it being the main funder of the organisation.
- The councillors, acting as company directors, made the decision in the financial interests of the company. However, tourism is a priority area for the council, and this decision conflicted with the council and its partners' objectives to provide important tourism facilities.



What have auditors found?

Three examples of what the auditors found in individual councils:

- The elected member on the ALEO board could have done more at key stages to ensure the council was aware of developing problems in the ALEO. At key stages he should have reassessed the balance between his responsibilities to the company and his corporate responsibilities to the council as a whole.
- To date, the council has been reliant on board members to raise any issues with arm's-length companies. We have noted instances where relevant information has not been presented to the council on a timely basis. Having a member or officer on the board is not a sufficient monitoring mechanism in itself.
- We found that one council continued to fund an ALEO while being unaware that it was in serious financial difficulty. At the same time, another funding partner was aware of the risks faced by the ALEO and had already suspended its funding.

88. Councils that have an overview of their ALEOs are better placed to demonstrate Best Value in the way they use their resources. They should also understand how ALEOs contribute to the council's overall aims, and the risks and levels of funding committed to them. Councils are better placed to do this where they disclose ALEO activities in their group accounts to give a clear picture of their activities and liabilities, including ALEOs. They should also ensure that their strategic and service plans incorporate ALEO activity. Councils should be able to identify and review or wind-up ALEOs that are dormant or ineffective. Maintaining a register of ALEOs can help councils to achieve this.

89. Councils should regularly review their ALEOs to ensure they continue to meet their objectives and remain the most appropriate option for service delivery. Scrutiny procedures should be in place to identify and act on under-performance including trigger points to withhold funding or to review the activity.

90. Councillors and officers should be alert to issues affecting service users. They should review customer satisfaction information and check that ALEOs are effectively undertaking any requirement to engage with service users and citizens. They should also be aware of how any changes to their policy on pricing and concessions impact on target client groups.

91. Councillors should be aware of how their spending decisions affect both council-run services and services delivered through ALEOs. ALEOs are vulnerable to reduced funding from councils and other partners. Situations can arise where ALEOs need to make difficult budget decisions such as reducing service levels or increasing prices.

92. Council officers and councillors need to consider the impact of their funding on the ability of ALEOs to plan their business. ALEOs that are more dependent on council funding will find it more difficult to manage budget reductions. ALEO boards find it difficult to plan their activities

over the medium term where they are unclear of what level of funding they will receive. The situation can also arise where a council chooses to reduce funding in response to surpluses generated by ALEOs. However, this can be a disincentive to ALEOs achieving their objectives, such as increasing service uptake.

93. As with services delivered directly by a council, it is equally important that ALEOs have their own mechanisms in place to review and continually improve their services. Councillors and officers should satisfy themselves that these are effective in practice and review and update their service agreements with the ALEO accordingly. Reviews of the effectiveness of ALEOs should take into account stakeholder and service-user feedback and examine areas such as governance, financial and resource management, performance, and the capacity for future improvement.

94. Termination agreements should be in place for all ALEOs, setting out the circumstances that may give rise to a review and, ultimately, situations where the council may move to end the agreement with the ALEO. The trigger points to review or terminate agreements with ALEOs should be clearly understood by all parties. This should cover explicitly the arrangements for the return of any council-owned assets and the steps needed to ensure that service users' interests are protected. The implications for the workforce will be a major issue, including, for example, liabilities for pensions.

95. We have found that the termination process can be complex in practice. Difficulties can arise where agreements are not in place, or where councils have not made their reasons for discontinuing services through ALEOs clear. This can result in difficult negotiations and potential legal action.

Councillors and officers require ongoing advice and training

96. Council representatives should not underestimate the commitments involved and responsibilities associated with a board position. Previous audit work¹⁰ noted that on average boards required 30 per cent more time of members than expected. Councillors and officers working in connection with ALEOs need to ensure they are competent to undertake the role.

97. Officers and councillors should be supported with guidance and training. Our audit work suggests that one in four councillors had not received training and support and did not feel clear of their role on external bodies. There are many issues that need to be understood including effective governance and the legislation covering companies, charities, and employment law, for example. We

would expect basic training to be compulsory for any councillor or officer who is taking up a role in an ALEO, with an annual review or update to ensure that key matters remain at the forefront of those involved in ALEOs.

98. We found that councillors are keen to receive training and many would have welcomed training or at least information about the organisations they were representing.

99. We have noted that while councils offer training in these areas, its actual uptake can be limited. Councils should monitor the effectiveness of training and its uptake. We found good practice where councillors are required to undertake a minimum period of training per year, for example as part of their continuous professional development. This may include training on the Code of Conduct for councillors, and more specific training on ALEOs (Exhibit 11).



What do councillors say?

"At first I had no idea what was expected of me."

"I've attended three meetings of the Trust and am still finding my feet."

"There's no support – you just get on with it."

"There was no training provided but this would be a way to overcome the lack of clarity I felt about the role during the first few meetings."

Source: Survey conducted as part of *Roles and working relationships: are you getting it right?* Audit Scotland, August 2010.

Exhibit 11

Training – getting it right

Areas to consider include:

- directors' and charity trustees' duties under companies and charities legislation
- directors' liabilities to third parties
- shareholders' rights
- codes of conduct, registration of interest, duties of confidentiality
- health and safety
- procurement, employment and environmental law
- wrongful trading, enforcement, disqualification and sanctions
- insurance.

Source: Audit Scotland

Part 4. Key points for action



There are a number of actions councillors and officers must take to strengthen their working practices and relationships with ALEOs.



The tables below outline key points for action for councillors and officers involved with ALEOs

Getting it right from the start

Councils must:

- observe the Accounts Commission/COSLA Code, and other guidance to understand their responsibilities and good practice when involved with ALEOs
- base any decision to set up an ALEO on sound options appraisal and feasibility assessments including risks
- ensure that where they use an ALEO it fits their priorities or policy objectives
- consider governance at the outset to ensure the council and the ALEO can effectively:
 - scrutinise performance and be held accountable
 - monitor costs, performance, and risk
 - engage service users and citizens
- clearly understand and set out the roles of boards, committees and the council in the articles of association or other constitutional documents
- set clear criteria for appointing representatives to the boards of arm's-length organisations, their required skills and experience, and any payments to board members
- agree clauses to terminate or review the delivery arrangement at the outset, taking into account the impact on services and their users, employees, and assets.

Keeping it right

Councils must ensure that council representatives involved in ALEOs:

- are aware of how well council objectives are being met by the ALEO
- carry out their scrutiny or management roles effectively, and take action on any shortcomings or under-performance
- are risk aware and satisfied that risks to the council and the ALEO are identified and acted upon
- act quickly on potential conflicts of interest, including declaring interests and seeking advice
- take action to withhold funding or to review or terminate the agreement, particularly where services or public money are at risk
- take action where the intended objectives of the ALEO are not being met, or diverge from council priorities
- periodically review their delivery arrangements to ensure that the best use is made of resources and that clear governance is in place
- review or wind-up ALEOs that are no longer active or effective, or contribute to the council's aims
- ensure that they have the skills and training to undertake their role.

Appendix 1.

A tool for checking progress

Checklist to support good management of ALEOs	Assessment	Required actions/timescale
Rationale for an ALEO		
<ul style="list-style-type: none"> • How clear are we on the objectives we are trying to achieve? • Are we satisfied that these fit in with the council's priorities? • Are we aware of the risks of the ALEO option on services and communities, the employees and the council? • How well do we understand any advantages of the ALEO delivery option compared to other options? • How will we know whether these advantages have been achieved in practice? 		
Governance of ALEOs		
<ul style="list-style-type: none"> • Are we clear how the services delivered through ALEOs are accountable to service users and citizens in general? • Do we understand how the money paid to the ALEO is accounted for? • Are we satisfied that we understand our roles on boards and committees, and know when to act on any potential conflicts of interest? • Are we aware of any conflicts in roles between council and ALEO representatives, for example in: <ul style="list-style-type: none"> – scrutiny – award of funds – strategic or operational decisions? 		

Checklist to support good management of ALEOs	Assessment	Required actions/timescale
Are we aware of how well ALEOs are performing, including:		
<ul style="list-style-type: none"> • How well the ALEO is meeting its objectives? • What areas perform well, and what needs improvement? • How satisfied are service users? • Is the ALEO providing value for money? • Do service levels need to be changed – and what flexibility is there to do this? 		
Are we aware of the risks faced by the council and the ALEO, including:		
<ul style="list-style-type: none"> • Is it financially sound, eg with appropriate levels of reserves? • Its ability to generate income or finance its borrowings? • What are the risks to services and the people that use them? • What are the risks to the council, eg liabilities for borrowings? • Is there a need to withhold funding or to review or wind-up the ALEO? • What are the implications for services, employees and assets if this is the case? 		

Appendix 2.

Toolkit for improving the governance of ALEOs

How well does the council ensure that effective governance and accountability is maintained when the council delivers services through ALEOs, including companies and trusts?

	Basic practice	Basic and better practice	Advanced practice
1. How clear is the council about its reasons for delivering services through ALEOs?	<p>The decision to set up or engage with ALEOs is within the council's powers, follows an appraisal of options for service delivery and is linked to its strategic aims/policy.</p> <p>The council establishes from the start clear limits to its involvement, a timetable for achieving objectives and the circumstances in which the agreement will be terminated.</p>	<p>An overall statement of purpose is expressed in key documents.</p> <p>A regular review is carried out to ensure that the services provided by the ALEO remain aligned with the council's current objectives.</p> <p>The council identifies specific circumstances that will trigger a review of its involvement, eg changes in key personnel in the ALEO.</p>	<p>Where services are delivered through ALEOs, the council has a well-developed and soundly based strategy for the delivery of services in this manner which is clearly linked to the council's wider strategic objectives and priorities.</p>
2. How well does the council understand the financial commitment and risk to which it is exposed through ALEOs?	<p>The council defines the nature of the financial relationship, its commitment to the ALEO (shareholding, grant, loan, guarantee, etc) and contributions are not open-ended in duration or amount.</p> <p>There is a written agreement about the transfer of public assets which safeguard their title and use.</p> <p>Minimum accounting and auditing arrangements are stated in the agreement.</p>	<p>Before entering into an agreement with an ALEO, the council assesses risks and documents the results.</p> <p>Service Level Agreements or equivalent are in place which specify the financial arrangement.</p> <p>A corporate register of all financial commitments to ALEOs allows the council to assess its overall commitment to its ALEOs.</p>	<p>Risk assessment extends beyond financial risks to other areas, eg reputational risk.</p> <p>The council identifies specific governance, finance and performance indicators that give early warning of potential problems and acts when required.</p> <p>Contingency plans are in place to ensure that service delivery is maintained if the agreement ends.</p>

How well does the council ensure that effective governance and accountability is maintained when the council delivers services through ALEOs, including companies and trusts?

	Basic practice	Basic and better practice	Advanced practice
<p>3. How effective are the council's arrangements for monitoring the financial and service performance of ALEOs, maintaining accountability and for ensuring audit access?</p>	<p>The council stipulates how and at what intervals it intends to monitor financial and service performance.</p> <p>The council has identified members of staff who will monitor the ALEO's performance.</p> <p>The council ensures its external auditors have right of access to key records of the ALEO and to any explanations they consider necessary from representatives of the ALEO.</p> <p>There are no significant performance or financial concerns about the ALEO that are not being actively managed.</p>	<p>Targets (SMART) and methods of measurement are agreed and documented at the start.</p> <p>Monitoring reports provide timely and good-quality information about the ALEO's performance in delivering services and impact.</p> <p>The council scrutinises monitoring reports and follows up where performance does not meet agreed standards.</p> <p>Staff of the council responsible for monitoring the ALEO are clear about their role and are supported in it; those involved in monitoring financial performance are suitably qualified.</p> <p>Access rights for internal and external audit are covered in the agreement.</p>	<p>Monitoring extends beyond financial and service performance to employment practices, equality requirements, purchasing policies and sustainability.</p> <p>The council receives and scrutinises forward plans. The council takes a risk-based approach to monitoring and targets resources accordingly.</p> <p>Where the council is one of a number of public organisations involved in the ALEO, it ensures that liaison and monitoring of the ALEO is coordinated.</p> <p>The reasons for providing services through an ALEO and the impact are clear in reports to stakeholders, including the public.</p>
<p>4. Where members or senior officers are appointed to the board or equivalent of ALEOs, how clear are they about their role?</p>	<p>The council has considered the question of representation and is clear about why it wants representation and is transparent in its decision about which members or senior officers will be involved and why. The council has a clear policy for any payments to board members.</p> <p>Members and senior officials are properly advised of their responsibilities to the council and the ALEO, including questions of declaration of interests. They exhibit this understanding through their behaviour and performance.</p>	<p>Training and support is provided to council representatives so they are clear about their responsibilities to the council and the ALEO.</p> <p>The council has a register of interests which records potential conflicts of interest that may arise from member or senior officer involvement in the ALEO.</p> <p>Members and senior officials are effective in performing their role as board members.</p>	<p>The council safeguards itself from risks incurred by members/senior officers in their dealings with the ALEO, eg liability insurance.</p> <p>Specialist training is provided to members/senior officers, eg on company or trust law. Training continues over the period of the member/senior manager involvement and impact of training is measured.</p> <p>The council reviews representation in ALEOs, makes changes in light of experience and considers rotating representation.</p>

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