

Report

Report to:	Clyde Valley Learning and Development Joint Committee
Date of Meeting:	11 June 2018
Report by:	Chair of Clyde Valley Learning and Development Project Implementation Steering Group

Subject:	Charging for Services Provided by the Clyde Valley Learning and Development Project
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1. Purpose of Report

1.1 The purpose of the report is to:-

- ◆ provide the Joint Committee with an understanding of the legal position as it applies to charging for services provided by the Clyde Valley Learning and Development Project

2. Recommendation(s)

2.1 The Joint Committee is asked to approve the following recommendation(s):-

- (1) that the position regarding the relevant legislation in terms of charging for services be noted;
- (2) that it be noted that any charges applicable to selling services to other local authorities should only be on the basis of cost recovery;
- (3) that it be noted that any charges applicable to selling services to other public bodies would also only be on the basis of cost recovery and should only be considered after each authority had adjusted their respective insurance professional indemnity cover accordingly; and
- (4) that it be noted that the advice obtained from South Lanarkshire Council's Legal Services is that the Clyde Valley Councils do not have a legal power to sell their services (including Promoting Positive Behaviour) to the private sector.

3. Background

- 3.1 The Clyde Valley Learning and Development Project was established to develop a shared approach to Learning and Development across the eight Clyde Valley Councils.
- 3.2 The original terms of the grant provided to the Clyde Valley Learning and Development Project by the National Board for Shared Services include the condition that the outcomes of the Project are made available to all other local authorities in Scotland.
- 3.2. The established principle for the Project was that there should be no charging for services between the Clyde Valley Councils and that, where possible, all contributions to development and delivery should be in kind.

- 3.3 The ongoing success of the Clyde Valley Group's Promoting Positive Behaviour (PPB) programme has raised a level of interest from several parties outwith the Clyde Valley Group's core membership (the Full Members), who have enquired about gaining access to this programme.
- 3.4 At the meeting of the Clyde Valley Learning and Development Joint Committee on 4 December 2017, the issue of selling this and other Clyde Valley programmes was raised by a Joint Committee Member. It was agreed that this should be explored and reported on at the next meeting.

4. The Legal Position and Advice

- 4.1. Following the December meeting of the Joint Committee, advice and legal opinion has been obtained from South Lanarkshire Council's Legal Services. The advice is as follows.
- 4.2. There are two different scenarios and markets to be considered regarding selling services. These are (1) other public bodies and (2) private sector persons or companies. The legal position relating to each is somewhat different.
- 4.3. The Local Authorities (Goods and Services) Act 1970 provides that local authorities can sell goods or services to other local authorities or bodies which have functions of a public nature.
- 4.4. Should this course of action be taken in relation to other public bodies, this would need to be declared to all Clyde Valley Councils' insurance providers and all would require to purchase professional indemnity cover. This is not an additional requirement when dealing solely with local authorities.
- 4.5. In addition, local authorities are not permitted to make profits on goods or services sold and can only recover the costs incurred in relation to that product whether selling to other public bodies (including local authorities).
- 4.6. Regarding selling to private persons or companies, this can only be done as part of "a relevant trading operation" carried out by the authority. A trading operation is defined as one for which, "in accordance with proper accounting practices (within the meaning of section 12 of the Local Government in Scotland Act 2003) the authority keeps trading accounts."
- 4.7. As a result, if the Group was considering selling to the private sector, a separate trading operation would require to be set-up, managed and monitored by the lead authority's Finance Services. In addition, a further requirement would be to find a statutory power to justify carrying out such a trading operation. The development and public selling of training materials is not within the statutory functions of local government.
- 4.8. The general power to advance well-being in Section 20 of the Local Government in Scotland Act 2003 cannot be used for this purpose as (1) it is subject to the restrictions in the 1970 Act and (2) cannot be used by an authority to raise money.

5. Conclusions

- 5.1. There are two separate selling scenarios for consideration. These are selling to the public sector and to the private sector.

5.2. In the case of the former, the Clyde Valley Group can sell its programmes to other local authorities, but only on the basis of recovery of costs incurred. In the case of other public sector bodies, the same conditions apply; however, additional professional indemnity insurance cover must also be in place within the relevant authorities, prior to undertaking the transaction.

5.3. In the case of selling to the private sector, legal advice suggests that in law the Clyde Valley Councils do not have the power to do this.

6. Employee Implications

6.1. There are no specific employee implications contained within this report.

7. Financial Implications

7.1. Due to the restrictions highlighted above, there are no additional financial implications contained within this report.

8. Other Implications

8.1. Clarity regarding roles and responsibilities of members is essential to ensure the project operates efficiently.

8.2. There are no implications for sustainability in terms of the information contained in this report.

9. Equality Impact Assessment and Consultation Arrangements

9.1. This report does not introduce a new policy, function or strategy or recommend a change to existing policy, function or strategy and therefore no impact assessment is required.

9.2. Consultation has taken place with South Lanarkshire Council's Legal Services in order to take the correct advice and legal opinion in relation to this matter.

Gill Bhatti

Chair

Clyde Valley Learning and Development Project Implementation Steering Group

17 May 2018

Previous References

- ◆ 4 December 2017 – Item 6 – Ownership and Use of the Promoting Positive Behaviour Programme

List of Background Papers

- ◆ Clyde Valley EGF Training Bid
- ◆ NBSS Clyde Valley Consortium Submission November 2006
- ◆ NBSS Clyde Valley Consortium – Secondary Paper December 2006

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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