

SCRUTINY – 24th April 2008**GOVERNANCE ARRANGEMENTS FOR TONE LEISURE (SOUTH HAMS) LTD****Report of Head of Corporate Services**

Statutory Powers: s.19 Local Government (Miscellaneous Provisions) Act 1976

Financial Implications: There are no financial implications arising from this report

Purpose

This report is submitted as requested by the Committee following a discussion at its meeting on 20th March 2008 (Min. SC.50/07 refers).

It links to **CP4** (An accessible Council: working with others to improve key services) and **CP5** (Value for money: improving performance in a cost-effective way)

RECOMMENDATIONS

That the report be noted

Governance of Tone Leisure

1. Tone Leisure won the Council's contract for community recreation, sporting and leisure management activities, including running the four leisure centres at Ivybridge, Kingsbridge, Dartmouth and Totnes, in 2006 and began to operate from 1st December that year. The tender was submitted by the company which had won the contract to run Taunton Deane's leisure service a year or so before.

2. At the time of tendering, Tone comprised only one company, Tone Leisure (South West) Limited, running the Taunton operation. It was established as a company limited by guarantee in December 2003 and registered as a charity in August 2005. Its objects – that is to say, what the company is set up to do - were:

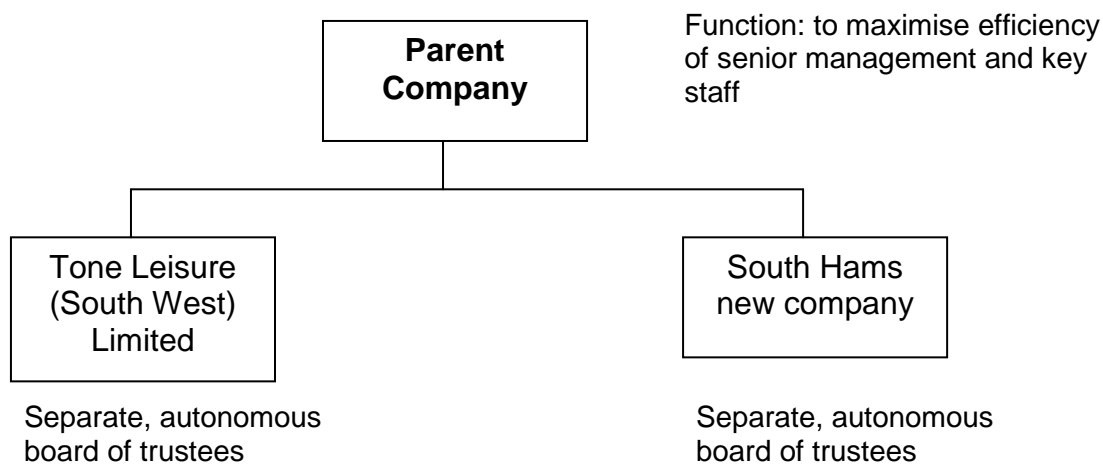
“(1) to provide or assist in the facilities and services for recreational sporting or other leisure-time occupation in the interests of social welfare, such facilities being provided to the public at large save that special facilities may be provided for persons who by reason of their youth, age, infirmity or disability, poverty or social and economic circumstances may have need of special facilities and services; and/or

(2) to promote and preserve good health and well being through community participation in healthy recreation; and/or

(3) such other charitable purposes beneficial to the community consistent with the objects set out [above] as the directors shall in their absolute discretion determine.”

The area of benefit of this company was not defined but “in practice” was Taunton Deane Borough.

3. In its tender documents, Tone proposed to extend its company structure to accommodate the South Hams work. The existing company would remain working on the Taunton contract, a new company would be set up for the South Hams, and a parent company would be established to monitor and oversee both of them. It looked like this:



4. This is the company structure that has in fact been set up. The Taunton company has been renamed Tone Leisure (Taunton Deane) Ltd. Tone Leisure (South Hams) Limited is the new company set up specifically to run our contract. The parent company is Tone Leisure Group Limited and it operates in a strategic or co-ordinating capacity. It is not a charity, because it isn't doing charitable activities. It has nothing directly to do with the operation of leisure services for South Hams DC.

5. The two "daughter" companies have similar constitutions. Both are charitable companies whose members' liability is limited by guarantee. This is the usual constitutional structure adopted by charities run by not-for-profit organisations, the advantage being of course that the people running it don't face personal liability in the event that the enterprise fails. Both companies are registered at Companies House; this means that the directors have to abide by the requirements of company law in terms of filing accounts and annual returns.

6. The objects of the South Hams company (charity no 1119626) are as follows:

"1. to provide or assist in the provision of facilities and services for recreational, sporting or other leisure time occupation in the South Hams district of Devon in the interests of social welfare, such facilities being provided to the public at large save that special facilities may be provided for persons who by reason of their youth, age, infirmity or disability, poverty or social and economic circumstances may have need of special facilities and services; and/or

2. to promote and preserve good health and well being through community participation in healthy recreation; and/or

3. to advance the education of the public in the arts and in particular the art of music, drama and dance; and/or

4. such other charitable purposes beneficial to the community consistent with the objects set out [above] as the directors shall in their absolute discretion determine”.

The objects are specifically drafted so as to comply with the legal requirements of charitable status, namely the relief of poverty, the advancement of education, the provision of recreation and leisure activities and the promotion of good health. Of course they also encompass what the Council wants the company to do.

7. The purpose of charitable status is to obtain relief from business rates. The reduced outgoings give the company a favourable costs comparison with either private sector companies or indeed local authorities in the same business.

8. The trustees are Ms Juliette Dickinson (also Managing Director), Miss K. Arnold, Dr J.C. Knight, Mr K.C. Johnson, Miss R.L. Bindon, Mr J.S. Brothers, Mr D.J. Rodd, Mr T.R. Lethbridge, and Mr S.N.S. Hitch. They were appointed by the company at the time of or shortly after incorporation and have been picked for their mix of skills in the leisure industry, health, and finance and business affairs.

9. The trustees are also company directors and they are personally and legally responsible for making sure that the company carries out its objects lawfully, effectively and efficiently and in accordance with its memorandum and articles of association. They have to file an annual return with the Charity Commission as well as with the Registrar of Companies. On top of that of course the company is also subject to the scrutiny of this Council's Audit and Scrutiny Committees, and contract monitoring by officers.

10. The constitution of Tone Leisure (South Hams) Ltd was examined prior to incorporation and completion of contract formalities and found to be fit for purpose.

Risk Assessment

10. Since this is a factual report for information rather than for decision, it is neither relevant nor appropriate to carry out a risk assessment. The risks arising from the operation of the contract itself are a different matter and will of course be assessed in the regular reports to members in the usual way.

Conclusion

11. Members may wish to bear the contents of this report in mind when scrutinising the operation of the contract.

Delyth Jenkins Evans
Deputy Monitoring Officer

Scrutiny
24 April 2008

Kevin Williams, Head of Corporate Services

Background Documents:

- Tender submitted by Tone Leisure in January 2006: exempt from public inspection by virtue of paragraph 3 of Schedule 12A to the Local Government Act 1972
- Central Register of Charities: <http://www.charity-commission.gov.uk>
- Companies House: <http://www.companieshouse.gov.uk>