



Finding a new operator

Summary

The current closure of theatres in response to the coronavirus pandemic has undermined the business models of all theatres in this country and Theatres Trust is anticipating a significant number of theatre operators becoming insolvent as a result. In order to protect theatres for the future Theatres Trust offers the following guidance on appointing a new operator in the event of a local authority-owned theatre entering administration.

Who is this note for?

This advice note is intended for local authorities who are the freeholders of theatre buildings in the event of the theatre operator's business closing.

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The correct model of theatre operation is highly dependent on the theatre itself, its facilities, condition and audience and we do not recommend any particular mode of operation. The purpose of this advice note is to introduce local authorities to different approaches of theatre operation and to highlight steps that can be taken to protect and preserve theatre provision for the community.

It is possible the current closure will be prolonged but local authorities should consider a preferred operation style as soon as possible so that the plans can be prepared in advance of a permitted reopening of theatres.

Workforce and assets

The failure of an operator will result in the specialist staff previously employed at the theatre becoming unemployed and potentially leaving the area or the sector. We recommend that efforts are made to stay in touch with these former employees as, if available, they are likely to be valuable to a new operator.

In the immediate short-term the priority for theatre owners should be to ensure the building is safe, secure and maintained. If a theatre is permitted to fall into disrepair, large capital investment may be required to bring it back into operation. Regular inspections, servicing of plant and machinery and a maintenance programme will be required – Theatres Trust can provide advice on this.

Depending on the terms of the lease with the former operator, some of the key assets such as technical equipment, staging and seats may form part of any administration. Local authorities should negotiate with liquidators to secure these assets. They will be essential for future use of the theatre and will be cheaper at this point than replacing with new equipment.

If the theatre was active with community work and producing its own performances, work with your culture team and to consider how to remain engaged with local creatives and the community. An active local creative scene could prove valuable in supporting the reopening of the theatre. Arts councils may have funding available to support this work.

Operator options

Local authority

Direct operation of theatres as a council service remains a popular model for theatres. The council maintains control over the programming, allowing use of the space for council events and meetings alongside artistic works.

A way to continue to support the theatre internally while reducing the burden on local authority budgets is by combining the theatres front of house spaces with other council services. There are successful examples of the box office serving as a tourist information centre or customer service desk and even foyer space used as the area's library. Chester's Storyhouse theatre was a renovation of a heritage cinema building with a new build extension. The building now hosts the Chester Central Library as well as an adaptable theatre space. By combining the uses they can cross-promote both services and extend the opening hours. While the team at the theatre can provide additional services for the public, it is important that the appointed team have experience in programming, producing and promoting.

Leisure trust

There are tax and rates benefits that can be achieved if the leisure team at the council is separated into an independent trust. As the new organisation is independent, the council will no longer have control over the programming or operation of the theatre. These independent trusts could, dependent on their governing documents, tender for the operation of other venues elsewhere and develop a network of venues.

This is now a popular route for local authorities however the Charities Commission has become particularly concerned with charities that are not independent and are controlled by a majority of council trustees on the board. In forming the trust you will need to take advice to ensure it is suitably independent to meet the commission's requirements.

You can see guidance on councillors as trustees here:

<https://www.gov.uk/government/publications/local-authorities-as-charity-trustees>

Independent theatre trust

Alternatively rather than making the whole leisure department independent some authorities may decide to convert the theatre team alone into a charity. This has recently been completed at the Marlowe Theatre in Canterbury and allows the theatre to operate independent of the authority. The additional systems and staffing required by the loss of shared property, legal and accounting services will need to be considered. Being independent of the council the theatre may be able to respond to changes in consumer demand and artistic shifts more rapidly, without being required to comply with council processes designed for different styles of working.

Bundling leisure offer

With some smaller spaces, local authorities have put their theatres out to tender as part of a package including gyms, pools and other leisure services. The theatre operating model this tends to create is a "hall for hire" which can continue to be used by the community but may not have a regular programme of public events. The traditionally shorter duration of these contracts does not allow for operator investment into the building. It can be a way to protect community use but does not come with many of the placemaking benefits of a theatre programme.

Community asset transfer

Where theatres have an active group of volunteers willing to take on the theatre, local authorities can consider transferring the theatre to the volunteers for operation. The Local Authority should satisfy themselves that the group have a business plan and a governance structure to operate the venue safely and sustainably. There have been cases where a community group have struggled to deliver their business model following transfer due to issues between other community groups who were unsuccessful in their bid to be the transferee.

Volunteer run theatres are not restricted to amateur dramatic programming there are many across the country that present a busy, mixed programme including touring theatre, dance, cinema, comedy and music.

Consider what support the council can offer the group with business planning and training and only look to transfer the property to organisations with the stability and good governance that gives the local authority confidence that provision will continue.

Outsourcing to a commercial theatre specialist

Larger theatres may be suitable for outsourcing to a commercial theatre operator. These companies often operate a portfolio of venues and are able to apply their management systems and economies of scale to the operation of venues. This approach is highly dependent on the scale of the theatre, its current financial performance, the condition of the building and the ancillary revenue generating spaces. It is unusual for theatres under 800 seats to be viable under this model amongst the current commercial operating models, but this may change.

A common approach taken by local authorities exploring new models is to approach companies that are potential future operators to understand the interest in the building's future operation and to obtain their input into the terms of a contract that would be acceptable for a theatre of that style. Work with procurement specialists to ensure any soft market testing is not perceived to unduly influence any potential future tender.

Considerations for outsourcing agreements

Subsidy requirement

While a few of the mid-scale and large-scale theatres have developed zero subsidy models it remains a rarity and most local authority venues previously transferred to an independent operator still require a subsidy. The idea is that specialised theatre operators either through economies of scale or lighter touch management styles can operate the venues more efficiently than a local authority directly might be able to and as such require less subsidy. The terms of any agreement and the amount of risk transferred to the operator will impact on the level of subsidy required. If the restrictions on a proposed contract are too onerous then it may result in low or no response to tenders, something that has happened with theatre contracts previously.

Models of agreement

There are different models of agreement which will depend on the extent to which the local authority wishes to continue to have control over the building and the services provided.

Management agreements alone can allow theatre operators to occupy and operate the theatre relatively quickly with very little responsibility for the upkeep of the building, This allows the local authority to offer shorter contracts and have more control over the theatre's output but may restrict operator investment into the building.

The more common approach is a combination of a lease and a management agreement where the two agreements are interrelated, the management agreement may control the spending of a subsidy where the lease identifies the split of maintenance responsibility, giving the operator more certainty and security and encouraging investment.

A lease alone is an option where the local authority has limited capacity for monitoring a management agreement or is investing low or no subsidy, theatre operators will have more freedom to programme and deliver the service as they see fit but some conditions on the buildings use can be applied.

The council may consider sale of the asset to an operator, to remove any responsibility on the local authority to maintain the building. The risks of loss of theatre provision are high here and unless transferred to a community group (see [community asset transfer](#) above) the sale will need to take place at market value. Restrictive covenants to keep the building in theatre use can be applied but they are not a perfect protection and once the sale is completed the local authority will have extremely limited influence on the theatre's output, purely the controls it has through the planning system.

Key terms to consider

Data and box office continuity

The former operator of the theatre will own the information about the existing customers of the theatre. Local authorities will need to find GDPR compliant routes to sharing this customer data with the new operator and give customers the opportunity to opt into the new operator's communications.

Putting in place provision for the end of the contract obliging the appointed operator to work with an incoming operator to ensure continuity of service to local residents will make future tenders more competitive and avoid barriers to other operators bidding to take it on. Building up a new customer database from nothing is an expensive activity and may threaten the viability of the theatre over the early years of a contract.

Programming

An operator will desire freedom in their programming decisions in order to generate the maximum return over the course of the contract. Traditionally commercial operators are less willing to pay guarantees than local authority venues have been and this can limit the programming styles within the theatre to a music-focused programme where the deal is more likely to be on a box office split. The council may desire a degree of diversity in the programme and set KPIs for the inclusion of certain performance styles. This may have an impact on the level of subsidy that the operator requires.

Where there is more than one venue in an area, the local authority will want to promote complementary programming. This can be achieved by placing the venues in the area under one operator or setting up a forum between the venues so they can work together to avoid clashes.

Some operators deliver youth classes and outreach activities that keep the building animated throughout the day. Local authorities may want to include this in the operator's brief and monitoring conditions.

Catering facilities

Increasingly the role of catering in the business model of theatres is vital to their survival. It may be that capital investment in the catering facilities at the start of a contract would reduce the subsidy requirement. It is very unlikely a local authority would maintain any control over the price or style of catering offer but opening hours may be open for agreement.

Ticket prices

It is very unlikely that an operator would accept control on ticket pricing. They may submit information about the level of ticket booking fees in the tender and agree a process of review for them but this is a key revenue stream. Fees may take a variety of forms including a levy within the ticket price, a per-ticket fee, a transaction fee or a combination of these. If the local authority want oversight on the fees being charged, this should be included in the monitoring requirements of the management agreement.

Maintenance responsibility

It is not recommended that the ownership of equipment within the building is signed over as part of the lease. In the case of the theatres in the London Borough of Sutton the failure of the operator resulted in all of the theatre equipment being auctioned off and the theatres being gutted. This delayed and prevented the reopening of its theatre spaces.

A clear schedule of ownership of all of the equipment along with the maintenance and replacement responsibility split between operator and local authority should be detailed in the contract and where the equipment is replaced it should be of an equal or higher specification. It is generally held that the council maintains the exterior of the building and its structure and the internal condition is primarily the operator's responsibility. In some cases there is an agreement of a threshold over which the council, as landlord, will be responsible for repairs.

Length of contract

Most theatre operators will require a lease of 15 to 25 year in order to secure a return on their upfront investment into the theatre. Poor condition of the building may reduce the attractiveness of long leases, as maintenance costs could become prohibitive if the responsibility of the operator. Alternatively if the theatre is a going concern not requiring significant investment, local authority's may prefer shorter contract lengths so they can reassure themselves that they are achieving value and retendering more regularly.

Staffing

Ensure there are terms in the agreement that require an appropriately skilled and experienced staff, approval may be required for the appointment of key members of staff. Local authorities may have living wage provisions that impact on the terms of the contract, which should be made clear to potential operators.

End of contract arrangements

At the end of the lease, a theatre operator should be required to return the theatre in a condition at least as good, if not improved, from the condition at handover. If operators have not maintained the building appropriately through its lifecycle then these dilapidation costs can be considerable. The local authority may want to ensure guarantees are in place to avoid the operator walking away from these responsibilities at the end of the contract.

The role of the Theatres Trust

If you are considering appointing a new operator for your theatre then get in touch with the Theatres Trust early in the process and we will provide advice relevant to the particular theatre and council objectives. We can also provide advice on routine maintenance of the building and preparing it for reopening. Contact us by email advice@theatrust.org.uk