

This evidence focuses primarily on Open Project Funding (OPF) as the Committee has previously investigated Regularly Funded Organisation (RFO) funding. The primary focus is on Creative Scotland's role and approach.

OUTLINE

We have explored the following:

- **WHAT IS/SHOULD CREATIVE SCOTLAND'S REMIT BE?**
- **WHAT SHOULD CREATIVE SCOTLAND FUND, AND HOW?**
 - **Funding need versus want**
 - **Funding structures to enable projects**
 - **At what point has an applicant had their fair share?**
 - **Funding income generation versus funding costs**
- **WHAT GOVERNANCE AND DUE DILIGENCE SHOULD BE EXPECTED OF CREATIVE SCOTLAND?**
 - **Does Creative Scotland have favourites?**
 - **Sector analyses**
- **WHAT WOULD A SUSTAINABLE MODEL OF FUNDING LOOK LIKE?**
 - **Commissioning**
 - **Funding monopoly versus funding a competitive market**
 - **Funding Individuals versus funding organisations**
- **CONCLUSIONS**

WHAT IS/SHOULD CREATIVE SCOTLAND'S REMIT BE?

Creative Scotland (CS) seems unclear about what its remit is. It heralds infrastructure projects (e.g. film studios) that suggest a strategic, structural approach whilst at the same time operating Open Project Funding (OPF) that treats projects in isolation, ignoring the creative ecosystem.

Everything starts with remit. In our view, Creative Scotland's remit should be: ***to curate a creative ecosystem from which high-quality work emerges sustainably.***

That is about much more than processing funding applications. It requires CS to have confidence in itself and its staff; to empower its Specialism Leads to **curate** their sectors in pursuit of CS's remit rather than to react to any applications that happen to come in; and, if necessary, to ruffle feathers in that pursuit.

All of CS's decisions should be judged against its remit. Applications should only be approved if they support CS's pursuit of its remit.

WHAT SHOULD CREATIVE SCOTLAND FUND, AND HOW?

Funding need versus want

CS does not distinguish between need and want.

CS never asks OPF applicants if they **need** the funding they are applying for. As a result, some applications it receives are from those who **want** funding they do not need because they are in a position to self-fund.

Thus, the main impact of some OPF grants is to increase shareholder/organisational wealth.

In one year, a highly profitable £2m company passed to an overseas trust the equivalent of 87% of the OPF grant it received. We would invite the Committee and CS to consider whether that represented a good or appropriate use of taxpayers' funds.

Funding want on the same basis as need wastes scarce arts funding. For each OPF application approved for a project that could have been self-funded, another, dependent on CS funding, does not happen.

When we asked CS why need is not assessed under OPF, we were told that assessing it would be 'difficult'.

We disagree. A 'prevention and cure' approach ought to be taken.

Prevention: Making it clear that applications would only be approved if there was a clear need for funding would discourage applications from those able to self-fund. That would ensure Creative Scotland employed more of its limited resources assessing applications for projects that would not otherwise happen. It would also stop it driving monopolistic tendencies as a consequence of funding the same applicants repeatedly, irrespective of need.

Applicants for larger amounts (usually organisations) could be asked to make a short statement about their need for the funding. The prospect of having to do so ought to discourage applications from those whose financial accounts would contradict their story.

Cure: If an applicant applied and it became quite clear that they did not need the funding, CS would be entitled to recoup some/all of the funding granted and/or to bar the applicant from applying again for a period. Whilst it would be hoped that this would not be necessary, any instances of this being enforced would send a clear message and reinforce prevention.

Quite rightly, CS does not want to expend substantial resources performing due diligence prior to awarding grants. By putting the emphasis on applicants to demonstrate need – or to

be prepared to demonstrate it if asked - would largely obviate the need for such due diligence.

Funding structures to enable projects

CS refuses to fund structure via OPF. This a major growth-inhibitor, particularly in cash-negative creative sectors such as publishing.

A useful analogy is Jenga. A start-up builds a tower on a base of a single piece. By only funding projects, CS forces applicants to pile more and more pieces onto that single-piece base. Eventually, building needs to cease or the tower will fall over.

In contrast, an established player receiving unneeded funding can use the cashflow and profit to invest in a 2-piece base and build a tower that blocks out others' light.

CS may argue that it does not provide growth funding for businesses. In reality, it does, but in completely the wrong way. Because context is ignored, OPF often provides funding to businesses that can already obtain growth funding elsewhere (by reinvesting profits or borrowing against assets) and denies it to those who cannot (e.g. because they have limited assets to borrow against) and for whom CS is the only option.

We go back to our proposed remit: *to curate a creative ecosystem from which high-quality work emerges sustainably*. **Funding structure is funding sustainability.**

At what point has an applicant had their fair share?

A consequence of funding want on a par with need is that, for some applicants, OPF is the gift that keeps on giving. No matter how much they receive, how often they receive it, or how much profit they make from their funded projects, they can return for more.

CS's decision to disregard context when assessing OPF applications is a key reason for the scheme being in disrepute. Taking account of context would resolve this.

One organisation has received OPF funding ten years in a row, totalling almost £0.5m. Despite that OPF funding having been invested in income-generating assets, the organisation's net assets are less than 20% of the funding it has received. Does that represent value for taxpayers? How many other, more successful businesses could have been kickstarted with that funding? How many were prevented from doing so because so much funding went to a single organisation?

To be blunt, why does Creative Scotland have Specialism Leads if it insists that they ignore context when making OPF funding decisions? (True, this ignores RFOs and over-simplifies; nonetheless, the point is worth making.)

Funding income generation versus funding costs

OPF does not properly take account of the potential for income generation.

Compare and contrast two fictional examples:

Example 1: A theatre company applies to OPF for funding to stage a play for which someone else holds the rights. There are costs in staging the play will be partially offset by the box office receipts. The theatre company applies to OPF (and perhaps other funds) to cover the gap. The play is staged and the project is over. Importantly, no assets (other than goodwill) have arisen from it that can be exploited in the future. The project has not enhanced the theatre company's ability to self-fund its next project.

Example 2: A book publisher applies to OPF for the difference between the costs and projected receipts for a book. Having sold in line with expectations in year 1, at the end of year 2 the book wins the Booker Prize. While for CS, the project is over, income from sales and rights deals pours in at the start of year 3 (when CS cannot take it into account) and will continue doing so for several years to come. The funded project has put the publisher in a very strong position to self-fund.

What might happen next?

The theatre company makes another application to OPF. It has created no income-generating assets to draw on, so can only put on the next performance if funded to do so.

The publishing company also makes another application to OPF. Despite being in a much stronger position to self-fund, CS assesses the publisher on the same basis as the theatre company. It does not even consider the publisher's ability to self-fund.

Whereas it is easy to understand why the theatre company might potentially be funded a second time, it defies logic that the publisher would be funded again. Yet that is how OPF works – it has been designed that way. The publisher received funding to invest in projects like the Booker-winner, with the expectation that, if they were a good publisher, they would pick titles with income-generating potential. Having been given that chance, and having succeeded, why are they still able to access scarce arts funding that they no longer need?

Our point is this: **if CS is funding investment in income-generating assets, it should recognise that what it is actually doing is funding an applicant's potential to self-fund.** If that potential is realised, funding should end; **funding should not continue forever.** If the applicant makes no progress with the funding they receive, or if owners withdraw unreasonable amounts that impact its ability to self-fund, funding should cease.

WHAT GOVERNANCE AND DUE DILIGENCE SHOULD BE EXPECTED OF CREATIVE SCOTLAND?

Given that public money is involved, it is incumbent upon CS to ensure, as far as it reasonably can, that it is spent wisely. Whilst it is unreasonable to expect Creative Scotland to conduct full due diligence on every applicant, it is reasonable to expect it to take steps that will minimise the risk of it funding other than in accordance with the proposed remit.

Simply by looking at information freely available from Companies House, we have uncovered, in some of CS's most heavily funded organisations, serious conflicts of interest and multiple breaches of the Companies Act.

Even when breaches have been notified to CS, it has taken no action.

CS's primary duty is to the taxpayer through the Scottish Government, not to applicants. **If CS believes there is a serious conflict of interest, it should withhold funding to force the company to resolve the conflict.**

CS is a funder; it is in a strong position to protect the Scottish Government/National Lottery's investment. A bank would *require* changes of a borrower or cease its funding. Why would CS not take the same approach?

We submit that **CS should make it a precondition of funding that incorporated applicants must have submitted accurate, up-to-date filings with Companies House/OSCR.** It should enforce that precondition rigorously. To do otherwise, increases the risk of CS funding in a situation other than intended (e.g. conflict of interest or insolvency) and could even leave it open to legal challenges.

Through its inaction, CS has allowed certain applicants to operate with impunity.

So, the issue here is less one of conducting extensive due diligence and much more one of willingness to act upon knowledge held, readily accessed or uncovered by others.

How has this situation arisen? In our view, the criticism that CS has received in the last few years has led it to try to avoid conflict. Changes that should have been required of applicants have been allowed to slide as CS has focused on defending its reputation.

That has all been exacerbated by the lack of a clear remit. It is hard to justify controversial/unpopular decisions if there is nothing to reference them against. A clear remit makes it easier to take difficult decisions; it forces the complainer to argue with the remit; the process becomes secondary.

Does Creative Scotland have favourites?

The opacity of CS's OPF decision-making process has left many potential OPF applicants feeling they are shooting in the dark against applicants CS has armed with night sights. Who would go into such a battle?

Many would-be applicants simply do not apply to CS because they perceive it has its favourites. Why waste considerable time and effort completing a lengthy application if the evidence indicates strongly that others will always be prioritised?

CS denies it has favourites. But is it a surprise that the perception of favouritism exists?

Applicants are left to speculate as to why a select few merit annual funding and other no funding at all. Is it because of the applicant's location? Is it because of who sits on the CS

funding panel? (Since we do not know who sits on the panels, it is impossible to assess if conflicts of interest have been ignored as they have been in some funded companies.) Does CS fund certain applicants annually so as to divert funds from competitors, thus increasing the chances of CS's *de facto* RFOs being successful and CS being perceived as choosing well?

We are not saying that any of these explanations is correct. Equally, we cannot say what the true position is because CS does not set out proper assessment criteria.

Once again, we return to remit. Because the remit is unclear, the assessment criteria are opaque. Make the remit clear and the criteria should become more transparent.

(It would be useful if CS set out what expects of applicants, e.g. filings up to date, appropriate accounting conventions followed, conflicts of interest disclosed, legal requirements complied with, etc.)

Sector analyses

CS does not keep track of who gets what from OPF. It operates on the basis that past funding is irrelevant, no matter how extensive or frequent. Yet, as we have argued above, previous funding is highly relevant where funding leads to investment in income-generating assets.

Strident is working to publish an analysis of CS's funding of Scotland's publishing sector that will show who has received what and with what frequency.

Such sectoral funding analyses should be produced annually by CS. Without them, it will be impossible for CS to assess applications against the remit we have proposed.

WHAT WOULD A SUSTAINABLE MODEL OF FUNDING LOOK LIKE?

As noted above, defining Creative Scotland's remit is key to this. In our view, CS should be tasked with *curating a creative ecosystem from which high-quality work emerges sustainably* and all applications for funding should be judged against this.

Commissioning

Focusing on the creative-sector ecosystem would entail CS commissioning work only where the market was unable to deliver. We agree that CS should have the ability to commission where there is a serious market failure.

However, **commissioning should be an opportunity to improve/develop the market, not a chance to hand even more funding to applicants already capable of self-funding projects.** CS would need to justify the placing of the work in terms of the pursuit of its remit. That might mean commissioning work other than from the usual suspects and either funding more heavily or accepting a degree of trade-off; e.g. a slightly more

expensive project in order to create step-growth for a new player in a sector where there is an effective monopoly.

Funding monopoly versus funding a competitive market

A monopoly is unlikely to produce high-quality work sustainably. If an applicant has already had its fair share (or more) of funding to invest in create income-generating assets, any further applications should be rejected.

Funding Individuals versus funding organisations

Funding books that are written but not published has little impact. Writers need publishers and publishers need writers. Funding publishers **is** funding writers (providing that any funding intended for writers actually flows to them – a separate issue that CS may wish to address.)

We would urge the Committee not to fixate on shifting funding from organisations to individuals where (as in publishing) there is a functioning market. CS should only intervene in a market in pursuit of its remit. If it does otherwise, eventually there will be no organisations, only lots of individuals...at which point CS will need to take on the organisational roles (becoming a publisher, for example, which it does not want to be and should not be).

CONCLUSIONS

In our view, the following is required:

- Creative Scotland's **remit** needs to be: ***to curate a creative ecosystem from which high-quality work emerges sustainably.***
- **Every funding decision CS makes should be capable of justification relative to that remit.**
- **Applicants should only ever be funded because they NEED funding**, not because they WANT it. A 'prevention and cure approach' should be taken to ensure this.
- **CS must recognise context** when considering funding applications. It cannot ignore previous grants when considering further applications.
- Lack of ability to invest in structure is a significant growth-inhibitor. **CS should recognise the need to fund structure as well as projects.** Structure enables projects.
- Where CS funds investment in assets intended to be income-generating, it is actually funding an applicant's potential to grow. Consequently, **CS should accept that**

there comes a point at which such applicants have had their fair share of opportunities. CS's remit should be to curate the ecosystem; funding in perpetuity acts against that remit. It risks CS being perceived as a competitor in markets where funding is invested in income-generating assets.

- **CS should publish annual sector funding analyses.** They will demonstrate how the remit has been pursued but also address the perception that CS has favourites.
- **CS must insist that those it funds comply with the law** (e.g. Companies Act and Charities Act). It should never fund an applicant knowing there is non-compliance and should have the confidence to withhold or recover funding. We urge the Scottish Government to require and empower CS to bring about this change in attitude.
- Similarly, **CS should be prepared to use its power as a funder to deny/recover funding where there is a conflict of interest.** CS's primary responsibility is to the Scottish Government/National Lottery, not to applicants' shareholders.
- **CS should be able to commission**, but only where there is a serious market failure. **Commissioning should be seen as an opportunity to curate a sector** as well as a means of correcting a market failure.
- **We urge the CTEEA Committee not to fixate on whether CS funds individuals or organisations.** Any number will be arbitrary. Focusing on the proposed remit will require CS to channel funding as the sector needs.