

# SOCIAL ENTERPRISE AND PUBLIC SERVICE REFORM

A guide for public sector  
workers, social enterprises &  
third sector organisations



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## IN A NUTSHELL...

In recent years, social enterprises have come to the forefront of the Government's agenda for change in the public sector. This applies not just to the current administration but also to the previous Labour Government.

Alternatives to the traditional model of delivering public services are being increasingly considered and social enterprises have plenty of opportunities in this new world order. This includes existing social enterprises bidding for public sector contracts and new 'public service mutuals' being formed by former public service workers.

Whether policies to change the public sector in this way are a result of a genuine desire to promote alternative ways of working, or are concerned primarily with reducing costs ultimately may not matter. The fact is, opportunities are being created for social enterprises of a kind that have not been seen for some time and may not be seen for a long time to come.

The view in the social enterprise garden is certainly not completely rosy and there are many significant challenges to face. However, in a world where traditional public services are coming under scrutiny there are prospects for social entrepreneurs to show what they are capable of.

This guide is intended to help both public sector workers looking to 'spin out' as well as social enterprises and other 'third sector' providers seeking to understand and navigate the changing landscape.

### WHAT IS THE 'MUTUALS' AGENDA?

The Government has talked a lot about the 'John Lewis' model. Particularly through the Cabinet Office it has pushed the agenda for 'public service mutuals'. But what does this really mean?

Historically, the term 'mutual' has indicated a certain type of legal structure – the 'industrial and provident society' (IPS) – and typically a particular kind of IPS, a 'co-operative', where the enterprise is run by and for the benefit of its members.

The Government, though, is using the term 'mutual' in a much wider sense. For the Cabinet Office, mutuals have three main characteristics. They are enterprises:

1. That have left the public sector.
2. That continue to deliver public services.
3. Where employee 'control' plays a significant part.

For the purposes of this briefing, 'mutual' is used in this current Government sense.

The Government is currently helping to provide some support for those interested in forming mutuals. It has set-up a Mutuals Information Service<sup>1</sup>, recruited Mutuals Ambassadors, and maintains an interactive map of Public Service Mutuals.<sup>2</sup> A successful application for support can lead to help with things such as business planning, legal structures and governance advice.

The current map of mutuals shows that 65 have already gone live (up from 9 in 2010). There is a good spread across the country with clusters (as might be expected) in and around major cities such as London, Birmingham, and Manchester. Health continues to make up the largest share of these – 53% by Cabinet Office figures for January 2013 – with ‘integrated health and social care’, and ‘social work’ reasonably significant at around 14% each. The map does not include mutuals that have been proposed but are still at the planning stage, of which there are around 35 according to Cabinet Office figures.

The current agenda has its legal framework in the Community Right to Challenge, which comes from the Localism Act.<sup>3</sup> The process of becoming a mutual draws on experience, particularly in the health sector, of the ‘Right to Provide’ and ‘Right to Request’ frameworks. For public sector workers looking to ‘spin out’, this potentially gives access to support and other resources not available to those outside the public sector. In addition, one of the permitted reasons for refusing a Right to Challenge is that the public sector staff currently carrying out the service in question have already begun a process to assess the viability of a mutual to do the same thing. Potentially, this has adverse implications for external bodies looking to exercise the Right to Challenge.

Whereas the Community Right to Challenge<sup>4</sup> is open to anyone – within and outside the public sector – the mutuals agenda refers principally to those who are currently working within the public sector.

## HOW DOES THE ‘MUTUALS AGENDA’ WORK?

Right to Request and Right to Provide<sup>5</sup> helped set out a basic process with several key milestones along the way. Whilst the current mutuals programme does not require anyone to follow a set process, the following should act as a useful guide.

1. **The idea is born** – a proposal is developed that one or more public sector workers will do some or all of what they currently do, but as a separate legal entity. At this stage it is necessary to secure initial ‘buy in’ from management to take it further. It is likely that the absence of such support will make it very

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<sup>1</sup> [www.mutuals.cabinetoffice.gov.uk](http://www.mutuals.cabinetoffice.gov.uk)

<sup>2</sup> <http://mutuals.cabinetoffice.gov.uk/interactive-map-public-service-mutuals>

<sup>3</sup> The BSSEC website has more on Localism, including a briefing paper: <http://bssec.org.uk/policy-issues/social-enterprise-and-the-localism-bill/>

<sup>4</sup> The BSSEC website has more on the community right to challenge, including a briefing paper: <http://bssec.org.uk/policy-issues/social-enterprise-and-the-right-to-challenge/>

<sup>5</sup> <http://mutuals.cabinetoffice.gov.uk/health/Rights>

difficult (if not impossible) to get the idea off the ground, no matter how good it might be.

2. **Working up the detail** – the next phase is to develop a business plan for the new body. This will include consideration of which legal and governance structure is proposed [see below], though this can also be done through a separate report. Depending on the type of services, some thought might need to be given to legal issues such as procurement or state aid. This is to show that the new body has the potential to stand as a real business.

A transition plan will also be needed to show how to get from the current place to 'go live' date. This will need to cover things such as how current 'back office' support – IT, HR, and payroll (for instance) – will be handled post-transfer. If the mutual will be occupying different premises, there will need to be a plan to show how this will happen.

3. **Review of the plans** – almost certainly, the plans developed at stage 2 will need to be approved by the public body currently employing the staff. The decision will be to say 'no', to say 'yes', or to ask for more work to be done ahead of a further review.
4. **Transition** – following the green light, lots of work will be needed to get to the 'go live' date. This is likely to include setting up the new legal entity, negotiation of service contract(s) and an asset transfer agreement with the public sector body, consideration of property issues such as leases of premises, and employment issues like TUPE and pensions.
5. **'Go live'** – the new entity begins life in its new form.

## MUTUAL MODELS

It is important to emphasise that the Cabinet Office does not favour mutuals which are so-called 'not for profit' over those which are 'for profit'. Indeed, it has been said that the government is 'agnostic' on this issue. However, in our experience, proposals are more likely to get the support they need from the current public sector employer if the mutual is not principally for private profit. As a result of this, not all mutuals are social enterprises in the widely accepted sense of being not for personal profit.

Nevertheless, we have concentrated here on those that could come into that category. There are two elements – legal structure and governance arrangements, and appropriate advice should be sought in both areas where needed.

The main legal structures are:

1. **Company** – there are plenty of variations available here. A social enterprise mutual could be limited by guarantee or by shares. If limited by shares, it would normally also be a community interest company ("**CIC**"). If limited by guarantee, it could be a CIC but does not have to be. A company limited by guarantee could also register as a charity, if appropriate. CICs have a built-in

'asset lock' intended to ensure that the use and disposal of assets are for the benefit of the community.

2. **Industrial and provident society** – there are two main sorts: the co-operative, and the community benefit society. Both can enable flexible business structures whereby the enterprise is owned and run by and for its members, whether they are customers (or service-users), employees or residents.<sup>6</sup>
3. **Charity** – not a legal structure in its own right but signifies that all of its purposes are exclusively charitable in law. Has extra restrictions including the need to comply with charity law as well as certain accounting requirements. The vast majority of charities are companies limited by guarantee rather than community benefit societies. To add to these two, and gradually being introduced, is a new model which is both a legal structure in its own right and a charity. The charitable incorporated organisation (“**CIO**”) is very new and so just finding its feet but may be an option if the new organisation’s purposes are exclusively charitable.

## WHY SOCIAL ENTERPRISE?

Social enterprises are commonly set up to help benefit a particular group of people – whether identified by common need or by geography. Such a model offers a good fit where there is a desire to maximise the value, contribution and commitment of staff. Where staff are content and highly involved in the decision-making and performance of an enterprise, there is widespread evidence indicating that they perform better and give more than the minimum required by the job. This in turn has positive benefits for those the social enterprise is there to help. Indeed, in many respects, it is the belief that employees in mutually owned and managed enterprises perform better and with greater levels of commitment that underpins the whole of the government’s current commitment to public service mutuals.<sup>7</sup>

There are also practical reasons why a not for personal profit mutual may be more attractive than a ‘for profit’ one. Passing public sector contracts and assets (including staff) to a for profit organisation is likely to be seen as privatisation – a concept which is not universally popular! There is now also far greater public awareness of the negative impact there may be on services if a substantial proportion of the income is diverted to provide a profit or dividend for the shareholders and owners of a for profit company.

For a mutual to succeed, it will certainly need the support of the current employing public body (as that body is likely to become a major customer of the new mutual,

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<sup>6</sup> See The Co-operatives Group <http://www.co-operative.coop/corporate/Public-Service-Mutuals/> and Co-operativesUK <http://www.uk.coop/publicservices>. BSSEC’s guide to business support also includes a section comparing the main company structures: see p.11 <http://bssec.org.uk/wp-content/uploads/2013/03/Business-Support-2013-v2.0.pdf>

<sup>7</sup> See *Our Mutual Friends: Making the Case for Public Service Mutuals*, Mutuals Task Force (n.d.) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61778/Our-Mutual-Friends.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61778/Our-Mutual-Friends.pdf)

commissioning services from it) as well as that of key stakeholders, such as staff and possibly also trade unions. In some scenarios it may also need the support of its service-users – especially if those service users are paying directly themselves for the service in question. For all of these people, a social enterprise ethos and approach is likely to be more attractive than the for profit equivalent.

Finally, social enterprises are more likely to be able to provide added social value beyond the core services: in financially straitened times, providers who can offer ‘services plus’ which help to save commissioners money are, again, likely to be the more attractive option.

## **ISSUES TO BE AWARE OF**

For staff who are leading the process, going down the mutuals route is far from an easy option. Significant work will be needed to prepare the business and transition plans and secure buy-in from relevant stakeholders, such as commissioners and staff. Making the business plan stack up is one thing; negotiating the political landscape and getting the necessary support is another.

There are a number of technical or legal issues too: things such as pensions provision, procurement, and State aid law can all play their part in getting the green light. Depending on the amount of support you get from your current employer, some or all of this may need to be done in addition to the day job: cue long hours and sleepless nights!

From the point of view of the third sector trying to make sense of all of this, it can seem a little unfair if those going through the mutuals process have some advantages over the rest of the sector. Ultimately, though, the options are to treat the new mutual as competition or to consider ways of joint-working, or for it to become a customer of yours. It could be a useful partner body with financial clout which helps it to win bigger contracts with you as a sub-contractor for specialist elements, or you could work creatively together to make an even better offer to commissioners.

## **ADVICE FOR THOSE CONSIDERING THIS ROUTE**

1. Don't take it on lightly.
2. Be prepared for hard work.
3. Communication, especially with staff and commissioners, is key.
4. Look for appropriate support to supplement your own skills.
5. Remember why you want to do this, and keep your eye on that goal.

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## USEFUL LINKS

**Cabinet Office Mutuels website**

<http://mutuals.cabinetoffice.gov.uk/>

**Social Finance's Technical Guide to Financing Public Service Mutuels**

<http://www.socialfinance.org.uk/resources/social-finance/technical-guide-financing-new-employee-mutuals>

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