

The right to run

**A practical guide for public
sector staff thinking about
setting up a mutual or
social enterprise**

“Since becoming a social enterprise we are much more in tune with our stakeholders, and our staff have never been this engaged or motivated. Members of the team have genuine ownership, and the result is that they’re creative and not afraid to challenge traditional ways of thinking. Being in control means we’re able to provide a diverse range of services that truly work for people in our community. It’s opened our eyes to a new way of working.”

Lyn Bacon, Chief Executive, Nottingham CityCare Partnership CIC

www.nottinghamcitycare.nhs.uk

“Spinning out is a real roller-coaster, but being a social enterprise makes you more accountable to service users, allows you to develop a really inspirational culture for your staff, and deliver social value. We have always been passionate about making a difference to people’s lives through innovation, which was sometimes difficult to do in the NHS. We don’t have any shareholders to satisfy, only the needs of the people who use our services.”

Scott Darraugh, Project Director, Social adVentures Limited

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Contents

This guide follows the journey from working in the public sector to starting a mutual or social enterprise. It explores every stage of the journey - from planning and setting up a new social enterprise to going live. It provides a checklist of actions at each stage, and features stories of those who have successfully made the transition. It also gives links to other helpful resources and documents.

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Terminology and glossary

Social enterprises

Businesses driven by social and/or environmental purpose. They are trading organisations (their main income streams are revenues for goods and services provided, not grants or donations).

Successful social enterprises generate surpluses or profits which are reinvested towards achieving their social mission. Their assets are often locked for community purpose.

Co-operatives

Businesses that are fully or majority-owned by their members – who may be employees, consumers, others in the community or a mix of these.

Employee owned businesses

Companies where employees own a significant or controlling stake in the business.

Mutuals

Businesses owned by their members. The term has more recently been used to cover a range of organisation forms including co-operatives, employee-owned businesses and social enterprises.

The definitions above can be overlapping. They are not based in law and are founded on a set of principles and on common understanding that has emerged over several decades.

Community Interest Company (CIC)

A relatively new type of company introduced in 2005 designed specifically for social enterprises that want to use their profits and assets for the public good.

Company Limited By Guarantee (CLG)

A form of company used primarily for non-profit organisations. A guarantee company does not have a share capital or shareholders, but instead has members who act as guarantors.

Company Limited By Shares CLS

A form of company with shareholders with limited liability. The shares may not be offered to the general public, unlike those of a public limited company (plc).

Expression of Interest

The proposal submitted to a manager, board, governing body when an employee or employees want to move from the public sector to a social enterprise or mutual model.

Industrial And Provident Society (IPS)

A legal form commonly used by co-operatives.

Memorandum of Understanding and Articles of Association

The governing documents for a company (limited by guarantee or shares or a Community Interest Company).

Right to Provide

A scheme announced by the Cabinet Office to allow staff in public services to establish a social enterprise or mutual.

Rules

The governing documents for an Industrial and Provident Society.

Social Enterprise Investment Fund (SEIF)

A fund established by the Department of Health to support social enterprises operating in health and social care.

Spin out

The process of moving an organisation from the public sector into a social enterprise or mutual model – to 'spin out'.

Introduction

For some time now public services have been delivered by a range of providers - public, private and not-for-profit. Most GP practices are small private businesses, your household waste is probably collected by a large private company and your local social housing is probably delivered by a not-for-profit housing association.

But recently there has been an upsurge in the level of interest in the transferring of public services into social enterprises and mutuals. The concept is not new – a number of very successful social enterprises have stepped out of public services in the past. These include leisure services, heritage and arts, health and education. Greenwich Leisure Trust (now GLL), Hull City Healthcare Partnership and Reddish Vale Technology College are pioneering examples.

Building on the success of social enterprises like these, the Government has committed to giving public service employees new 'Rights to Provide', enabling them to put forward proposals to take over and run their services as social enterprise or mutual organisations.

The Department of Health's 'Right to Request' initiative is leading the way, and in 2011, almost £1 billion pounds' worth of community health services will be transferred and delivered by emerging social enterprises.

The draft Localism Bill also includes the provision for a new right – for employees to bid to take over the running of local authority services. All of these policies will give groups of staff the opportunity to bring their proposals to the attention of their local council or NHS Board where they will be given serious consideration.

At a local level, public bodies are considering how they can commission and buy services rather than deliver them in-house. They are often attracted to mutual, co-operative and social enterprise models.

This is happening across country, and Lambeth, Peterborough and Suffolk Councils have made headline news for significantly reducing the direct services provided.

All this adds up to a wave of new opportunities. But the journey to becoming a social enterprise brings challenges. It calls for a clear vision, dedication and often a new set of skills and way of thinking. Policy and practice in this area is still developing and the path to becoming a mutual or social enterprise is not always clear. At times it can be long, lonely and frustrating. The good news is that people who have arrived at the other end most often say it's the best thing they've ever done.

This publication may be subject to change in light of developments in policy and practice emerging from the Department of Health, Cabinet Office, Department of Communities and Local Government, as well as case law.

In this case we will endeavour to keep it up to date. Please return to our website to check for a refreshed document if you downloaded this copy (or were given it) a few months ago.

Benefits of a mutual or social enterprise

Before you start it is important to be clear about what the benefits of social enterprise and mutual models are. Many of these benefits are linked to the values and attributes we might expect the public sector to exhibit, but which some staff find get lost along the way.

There are other benefits such as flexibility, the ability to be imaginative, take up opportunities as they emerge and overcome conventional boundaries that sometimes hinder the public sector.

The evidence for this is based on some outstanding examples of organisations that are committed to the belief in social enterprises' ability to transform public services. But there are, of course, successful and unsuccessful social enterprises just like private sector businesses and public sector bodies.

Some of these benefits have been summarised by Lance Gardner of Care Trust Group as the opportunity for public sector staff to "reconnect with purpose".

Evidence also suggests that higher productivity, reduced sickness absence, resilience and higher levels of staff motivation can often be associated with social enterprises and particularly employee-owned businesses. Others have suggested that the mutual or social enterprise option is the one best suited for groups of staff who are keen to be masters of their own destiny, rather than let their future happen 'to them', such as being cut, merged with another public sector body or transferred into the winner of a tender.

However, becoming a social enterprise or mutual may not be for everyone – or right in every situation - and this option should not be chosen lightly. It is also important to consider the potential risks and disadvantages of mutual and social enterprise, and these should be factored clearly in your options appraisal (section 2). These may include problems with access to finance, and the fact that mutuals and social enterprises, like any other businesses, can fail (although it is important to understand the extent to which individuals are financially liable, which can often be overstated).

These characteristics are not unique to social enterprise alone, but the most successful social enterprises exhibit some of the following characteristics:

Benefits	...of commercial approach (which public sector can struggle with)	...of social mission (which private sector can lack)	...unique to social enterprise?
Staff	Financial incentives and flexibility around terms and conditions Lighter administrative burdens Greater autonomy and flexibility to innovate	Staff empowerment in decision making and governance Commitment to social mission	Reduced absenteeism Lower staff turnover
Customers	Nimbleness and entrepreneurial culture to respond to market opportunities and emerging needs and wishes of customers	More engagement through governance and ownership models Service user involvement in design of services Greater levels of trust	Focused on social need Customers become supportive advocates for the organisation
Resources	Flexibility Incentives to create surplus	Safeguards on assets and surpluses reinvested for community benefit	Independence to access and join up alternative funding streams

Is this the right option for you?

The 'Right to Provide' represents a high level commitment from the heart of Government.

Over the coming months, this ambition should develop in practice to encourage the development of social enterprise and mutual organisations. But regardless of how policy develops, the creation of a spin-out mutual or social enterprise remains, above all, about navigating a journey.

The first stage in the journey should be conducting an 'options appraisal'. This is designed to help you to work through the range of options available to you and determine whether establishing a social enterprise or mutual is the right one for you.

At the heart of the options appraisal should be a question of who will buy the service. Is there a market for the services to be provided in future? If not, then there will be no commissioner or consumer, no income, and no business - and it is unlikely that any new enterprise will be viable.

However, if you do believe there is a market for what you are selling, an options appraisal should include the following steps:

- identify the options
- identify the criteria for appraising each option
- gather evidence
- evaluate options against criteria using evidence
- identify preferred option

The criteria will vary depending on the context and who is leading the options appraisal. However, example criteria to consider could include:

- fit with public sector values
- popularity with staff, community, commissioners, etc.
- cost and complexity of set-up
- potential for innovation, integration and service improvement
- ability to respond to market and diversify income
- scope for cost savings

You should consider the relative costs and benefits of the alternative options, taking into account the available evidence and arguments in support of each. Each option will have different characteristics, benefits and disadvantages, and risks.

As part of the options appraisal it is also important to distinguish between

- a) where you want to get to (the possible destinations) and
- b) how you get there (the paths).

There are a number of 'end-states' which a provider of public services may arrive at, including broadly:

- public sector
- conventional private sector
- mutual or social enterprise
- a hybrid model (such as a joint venture with an existing social enterprise or private company)

However, these are not the same as the path you may choose to follow in order to arrive at your destination. These may include, broadly:

1. Undertaking an open competition (procurement / tender, competition for a grant, or contest for a joint venture partner)

2. Transferring into a 'spin-out' mutual or social enterprise (see section 3 for procurement rules)

3. Taking a transitional approach such as forming an arms-length public sector body, possibly integrated with another provider (introducing a commissioner / provider split)

Some paths may not always lead to the destination that might be expected. For example, while your preferred option may be a social enterprise, if you have to go through open competition, the contract may be won by a private sector body. Also, it is not always clear what path you need to take to reach the desired destination. It seems that many public service providers currently find themselves in a position where there is an ambition to establish a mutual or social enterprise but the path is unclear.

Hopefully, this guidance goes some way to helping to choose and navigate the appropriate path. There is unlikely to be one ideal option. But the outcome of the options appraisal exercise should be to identify the preferred option to pursue, above the others. This does not mean it will happen. But this will enable you to begin the journey, testing the viability and sustainability of the preferred model.

Are we too big/small to be a stand-alone social enterprise?

Questions to consider

Who will lead the options appraisal?

Is it the commissioners, the group of staff, the governing body or the management? Each of these may be appropriate in certain circumstances but the evidence suggests, perhaps unsurprisingly, that staff-led spin-outs are most likely to succeed when they are staff-led. But also when they are able to secure support from a number of stakeholders.

Are the changes you plan to make particular to any one option?

For example, – will being a social enterprise allow you to diversify your income streams in a way that you would be unable to do if you remained within the public sector.

This is not the time to worry about legal form or the detailed tax implications. This will come in the business planning phase. However, it may be important to consider the high level implications of potential 'deal-breakers' such as VAT.

The short answer is an emphatic “no”. Successful enterprises come in all sizes. There is no intrinsic reason why any business is too small or too large.

But the context can matter. For example, Mutual Ventures says: “Larger organisations are often better equipped to deal with the complicated and time consuming public sector procurement process and can be more effective at managing operational risk. However, it is rather old fashioned and corporatist to suggest that employee-ownership should only be considered by large groups of staff. There will be opportunities for all sizes of new organisations but for some services where there is a focus on interpersonal contact, such as social care and even probation services, small could be more appropriate”.

As part of your business planning, it is important to think about the market in which your new enterprise will be operating. If those who will be paying for the services are unwilling to negotiate with providers above or below a certain threshold, then size will matter.

But there are ways to stay small but benefit from scale at the same time. Some smaller social enterprises may become part of a group of social enterprises so they can share resources and expertise.

Social enterprise is the preferred option

If you decide that mutual or social enterprise is your preferred option, then it might make sense to present the outcome of your options appraisal in the form of an 'Expression of Interest' (Eoi) to your governing body or assuring authority.

This may be the Council, Primary Care Trust Board, Foundation Trust Board, Mental Health Trust Board or central government department. (The body that currently holds responsibility for your service.)

This is not a full business plan, nor even a business case. The purpose is simply to show that you can demonstrate you have considered some of the key issues that setting up a social enterprise will entail.

At this stage, you should not need to include a large amount of detail.

It can be a good idea to present your Eoi in person to your stakeholders and assuring authority.

The guidance we produced in partnership with the Department of Health on the Right to Request may be helpful here in persuading the appropriate parties that a similar process has been followed.

http://www.socialenterprise.org.uk/data/files/publications/social_enterprise_making_a_difference_guide.

Suggested questions for the expression of interest

- **Why do it?**
- **What will you do differently?**
- **Who will benefit?**
- **How will the social enterprise help meet local priorities?**
- **What service or services will the social enterprise provide?**
- **How will you engage with stakeholders?**
- **How will the social enterprise be funded?**
- **Is the proposal sustainable?**
- **Do you have the required skills?**
- **How will you monitor and evaluate the social enterprise?**

Taken from The Right to Request (Department of Health).

Checklist

Will there be a market for your services in future?

Do you know what your options are?

Against which criteria will you test the options?

Who is leading the options appraisal and who needs to support it?

Do you know who you need agreement from to proceed?

How will you present your Eoi?

Navigating the journey

Once you have decided that social enterprise is the option for you, the next phase is about navigating the journey.

Appropriately, it is a mutual journey. Your success in finding your way through the challenges and pitfalls will depend upon your ability to take people with you. This is one reason why everybody's journey is different, and there are no rules on how long a journey will take.

Before setting off, it is essential to agree the journey ahead with your full range of stakeholders in order to avoid confusion, wrong turns or backtracking further down the line.

Some potential stakeholders are listed below to help you think who you may need to engage. Above all, it is important to seek to connect with your stakeholders as early as you can and maintain communication and co-operation throughout the journey.

James Miller from the social enterprise, Living Well, explains: "There will always be resistance to any change, so we needed to be sure everyone involved understood what we wanted to do."

One way to formalise this is to invite representatives from each group onto your steering or project group. This way, they are more likely to feel it is their journey too. Stakeholders have the potential to support you along the way or obstruct your path. Here are some suggestions about who your fellow stakeholders might be:

Staff

Some staff currently delivering the services may be excited about the idea of developing a social enterprise. But it's unlikely that everyone will understand what a mutual or social enterprise is, and they will have lots of questions. Almost certainly, staff will be concerned about their terms and conditions, their job security and their pension entitlements. While some will embrace change and uncertainty, others will fear it.

Above all, you will need to work with staff to engage them along the way and allow them to have a say in the plans as they develop.

This could involve seeking their input on various elements of the business planning process, or consulting them on whether they wish to own a stake in the new enterprise. This will be particularly important if you are exploring the creation of an employee-owned business, which literally belongs to the staff.

Community

Whether service users, customers, beneficiaries, patients, citizens, clients or residents - these individuals, formal and informal groups - are likely to care about the services they receive. They may feel that a move toward a mutual or social enterprise is risky, or they may embrace the opportunities it brings. Some may not be interested. It may be useful to establish a community engagement forum or invite local representatives along to meetings. Again, this will be particularly important if the plan is for the new enterprise to embody a community ownership model.

Commissioners/budget-holders

Your commissioners may feel threatened by your plans or they may be delighted. They too may have a journey to embark on, moving from thinking of themselves as budget-holders or managers to becoming genuine commissioners and purchasers of services.

Christopher Long, Chief Executive of NHS Hull, says: "The process of separating our commissioning and provider services hasn't always been easy... the move will enable NHS Hull, as the commissioning organisation, to focus our efforts entirely on commissioning services which offer best value for money and which meet the needs of local people."

Commissioners may not have the experience of working with arms-length providers. Your ambition to 'spin-off' may be very significant for them in changing their role from budget-holder to commissioner.

As you progress on your journey, this relationship will move from collaboration and discussion through quasi-commercial negotiations to a more formal and separated contractual relationship.

It will be important to maintain good working relations with your commissioner, but also to be aware that this relationship is changing. They may find it difficult to 'let go'.

The governing or assuring authority

This is the body that ultimately holds responsibility for your service. If you work in a Local Authority, politics are likely to play a significant role in whether your idea is supported. But in any context, the personal views of significant individuals can be very important.

It is worth asking yourself: What are the politics of your Council? Which members are likely to be for or against the idea of a mutual or social enterprise? On the plus side, securing political support from influential members can be a powerful tool for unblocking problems with other stakeholders. Can you identify a 'champion' to support your cause?

Don't forget there will be risks if your plans are very closely associated with one particular individual.

Senior management

This may be you, your direct managers or the senior management of your organisation. It is important for people leading this process to understand that, while some people may feel motivated and enthused by your ambitions, others may feel threatened. Others who have travelled this journey say the reaction of many people depended a lot on whether they felt included in the plans for the new enterprise.

If you work on the frontline and do not have the support of a senior management group to pursue your plans, you may be wondering if you can - or should - bypass your immediate management and go directly to your senior management or Board?

Experience from others who have set up 'spin-out' social enterprises suggests you can, and it may sometimes be necessary. But it is of course better if you are able to collaborate and work with your immediate management in order to avoid problems later in the journey.

You should weigh up any risks in 'sticking your head above the parapet' in pursuing your ambition to set up a mutual or social enterprise against the risk of not doing so.

Regional and national government and regulators

These might include the Strategic Health Authority, clinical regulators, Pensions Authority, Monitor, the Co-operation and Competition Panel, Companies House, and HMRC.

Factor in the time to work with these bodies, including them in your planning process. You are unlikely to have many levers available to hurry them up if you are relying on them to move forward.

National and local union representatives, media and professional bodies

You will need to establish effective working relationships with trade unions and the people they represent. While (nationally) unions can be nervous about social enterprise, locally the picture is often more mixed. Local representatives are often keen to simply represent the interests of their members, regardless of national opinions and arguments.

And if the members are keen on social enterprise, they will be more positive. Above all, talk to the unions early. The media can be either a powerful ally or hostile critic of social enterprise.

It is important to ensure they are well informed from the outset on what you are trying to achieve and how you plan on achieving it.

Misinformation and misrepresentation of the facts can be hard to rectify later. Remember that when a news story is published, it will be used again and again for reference for future articles and other documents that are being written about social enterprise.

Local newspaper clippings are an important source of information for local opinion-formers.

There are no rules to say that staff must be balloted on the transfer to a mutual or social enterprise, but real engagement and support from staff is critical to the success of any new organisation.

Experience suggests that if staff are balloted, then it is good practice to allow them to consider the full range of legitimate options for the future of the service. This will give you and others valuable information about how the staff feel about the possible options. Make it clear to staff what the legitimate options for the future are, because it might be that the most popular option is not practical or viable.

For example staff need to be made aware that they could be transferred to the private sector winner of a procurement exercise which may be a less popular option.

Ultimately, when staff are given the opportunity to transfer to a new organisation, it is their decision whether or not they do so.

You may want to take further advice on this area as it can be tricky. Often the best people to talk to are those who have gone before – we can help you make those connections.

Other service providers - including existing mutuals, social enterprises and other civil society organisations.

These may be potential competitors or collaborators and advocates of social enterprise. It can be a good idea to reach out to potential competitors and partners in order to secure their support for your plans.

They may see opportunities in the services you currently provide or see opportunities for working together.

You may want to explore the possibility of developing close links with an existing social enterprise to help you with your plans, or with a view to more formal co-operation.

However, you should be aware of - and take advice if necessary - on competition law, as there are likely to be risks in bypassing a fair and open procurement exercise through 'spinning out' into an existing social enterprise.

Of course, once your new enterprise is independent it will be free to engage with whoever it chooses.

Things to think about

Be prepared for questions to which you won't yet have answers.

Don't be afraid to say: "I don't know". But stay aware that you are being judged on your competence and credibility. So show your stakeholders that while you may not have all the answers yet, you do have a plan for addressing them. This is a journey and you will develop knowledge and expertise along the way. Some technical, albeit important questions won't be answered until deep into your business planning or transition phase to becoming a social enterprise.

Be careful to ensure conflicts of interest are managed well.

For example, staff set to transfer should not take part in negotiating the terms of the transfer on behalf of the public body, for example. It is important therefore to agree up front which staff are on the commissioning side and which are on the side of the emerging enterprise.

Keep pushing, stay determined and think about the merits of asking for forgiveness rather than permission!

Be entrepreneurial. This is your journey and you will not come out at the other side unless you drive it forward.

Costs

The journey towards establishing a mutual or social enterprise will cost.

Costs can be incurred at each stage, in business planning or tendering (with technical, financial or legal issues), in setting up (moving premises, putting in place new finance or IT systems, creating a new identity and branding, transferring staff or recruiting a Board), and with launch (working capital, attracting finance for growth, membership fees, asset acquisitions).

Many of these activities may simply take up staff time. Or you may need cash to pay for specialist external advisers. So where are you going to get these resources from?

You may be able to approach your 'parent organisation' (the public service body you are currently within), even if it's only to borrow a finance colleague for a few mornings a week.

- The Social Enterprise Investment Fund (SEIF) has been providing financial support for emerging social enterprises operating in health and social care. The Cabinet Office has also pledged to create a Mutual Support Programme to support emerging spin-outs, so keep an eye on latest developments in central government. Visit our website for the latest information.

- Other specialist finance providers are now looking to support spin-outs, including Bridges Community Ventures, the Baxi Partnership and MITIE.
- You may be able to approach grant-makers or traditional finance providers, although this may be difficult before you have finalised your contract.

Pro bono support can be available so talk to existing charities or social enterprises or a co-operative in your area.

You may be able to reduce these costs through accessing support from government departments, study visits, mentoring, local and regional events, from peers, sector representative bodies and others.

Some will be keen to share their experience of the journey, but others will guard the commercial confidentiality of their business plans so don't expect them to pass everything on. But if you can develop good relationships with those who have been through the social or mutual enterprise development process, it is probably one of the most valuable steps you can take on your journey.

Do I need to compete for a contract?

The journey ahead will depend, in part, on whether your emerging enterprise is able to secure an initial multi-year uncontested contract, or whether you will have to bid for a contract alongside others. There remains considerable confusion about this issue and practice varies across the country.

This guidance is not legal advice. You and the public authority in which you are based should seek appropriate legal advice if necessary.

Here is some background information which may be helpful to you as you seek to understand the journey ahead. First, EU laws apply when public authorities seek to buy in supplies or services. Even when a tender process is not required by EU law, some degree of advertising, appropriate to the scale of the contract, may be necessary.

Department of Health guidance makes it clear that the "procurement process should not give an advantage to any market sector" (public, private, voluntary, charitable and social enterprise).

So a mutual or social enterprise looking to establish a contract with a public body as a supplier or service provider, will be treated the same as any other bidder and will only secure

the contract in a bidding process if it puts forward the most competitive bid. Under the 'Right to Provide' as it stands in the draft Localism Bill, the public authority "must carry out a procurement exercise" relating to provision of the service.

The Department of Health guidance says "commissioners must satisfy themselves that it [the process] complies with the overarching principles of transparency, equality of treatment and non-discrimination". So in many cases, there will need to be a formal competition, such as a procurement exercise, for the provision of services.

However, there is some expectation, following the precedent set by the Right to Request which awarded guaranteed contracts, that there may sometimes be greater flexibility than suggested above. Francis Maude MP stated on the 17th November 2010 :

"Where public procurement processes allow...staff forming a mutual proposal will be awarded a contract to continue providing services rather than going through the full tender process...in a lot of these areas there will not be a well-developed market, so it will be perfectly possible to make a negotiated arrangement".

The potential for the award of an uncontested contract can depend on the type of services to be provided. For example, the EU procurement rules divide services into Part A and Part B services. There is greater flexibility for awarding contracts for Part B services, which include health and social care services as well as recreational and cultural services.

Procurement thresholds, perceptions of the potential for market distortion or the risk of challenge, and the market response to an initial advertisement can also be crucial factors. Under negotiated procedure, or restricted procedure, it can be possible for the public authority to select just one bidder with whom to negotiate a contract.

There is also increasing interest in potential routes between the extremes of a contested procurement and award of an uncontested contract. Staff may be able to explore other models following advice from procurement and legal experts, which may include:

1. Establishment of a framework 'call-off' agreement with a number of suppliers, but which subsequently allows for a commissioner to call off services directly from one supplier without the need for any further competition;
2. Competition for a Joint Venture partner combined with a procurement process for allocation of a contract to be delivered by that partner. This process could specify how the joint venture arrangements would introduce mutual or social enterprise characteristics;

3. Transfer into an arms-length, but wholly public sector owned mutual or social business which remains within public sector and allows scope for award of uncontested contract (known as TECKAL). At the end of the initial contract period, the state could then explore the possibility of gifting its shares to staff on an individual basis.

Of course, in several service areas, multi-year block contracts may no longer be relevant, where individual and personal budgets are being introduced as the future model of commissioning. Secondment arrangements for staff have also been proposed and tried in some quarters, but there are doubts as to how this could represent a long-term sustainable model.

In any case, staff keen to set up a mutual or social enterprise need to establish as early as possible in their journey the route they will have to navigate in order to secure a contract to deliver the services they wish to provide.

This may call for them to get support from in-house or external legal advisors, understanding local or national precedents, and keeping up to date with the latest departmental guidance. As *How to Become an Employee Owned Mutual* says: "It's vital to open up a dialogue with key commissioners at the earliest possible opportunity".

For further information on procurement see 'Working With the Public Sector: Busting The Myths' available from www.socialenterprise.org.uk.

It could also be worth sharing this with your commissioner or whoever is ultimately responsible for your future.



"I could have retired instead, but this change to social enterprise has been motivating. I wouldn't do it if I didn't find the work worthwhile and rewarding. I'm not knocking the NHS, but this a chance to take the good parts from what we've already achieved and improve upon them."

Christine Tully, Ripplez CIC
www.ripplez.co.uk

Planning

Once you have agreement to pursue the creation of a mutual or social enterprise, you need to start your business planning.

You will need a plan for who is doing what, how long it will take, the specialist knowledge and support required, costs and deliverables. You may also be competing to win a contract at the same time.

The business plan will contain the answers to all the questions you have (about tax or TUPE or pensions, for example) to give you and your colleagues the confidence you need to manage your mutual or social enterprise successfully. While you may need to have the business plan approved by your assurer, it is really for you.

At this stage you are still planning. It is important to take each stage at a time and not jump into the creation of a new legal vehicle, or initiate staff transfer, before you have understood the implications. The business plan may include some of the following elements.

Summary

A brief overview of the business plan, summarising the key points in the rest of the document. It can be a good idea to leave this section until last.

Strategy

- Setting out the mission, vision, values, strategy and core business of the new enterprise.
- Considers how the new enterprise measures and improves its social (and environmental) impact.
- Looking at how the new business will take opportunities to innovate, and not only replicate established ways of working.

Products and services

- Explaining the range of services to be delivered by the new enterprise.
- Looking forward to how services will be developed and improved.

Market

- Reflecting on the need for the services.
- Understanding the purchasers who will pay for the services, the nature of guaranteed and potential income, pricing, terms, risks and timings.
- Analysing existing and potential competitors, and a plan for dealing with threats.
- Considering the market both now and in the future.

Governance and membership

- Laying out the structure, skills and capacity of the Board.
- Description of sub-committees (finance, remuneration, etc).
- Establishing the members of the enterprise, including community and service user representation, if appropriate.
- Understanding the legal personality of the new enterprise.

Management and systems (HR, IT and finance)

- Considering the regulatory environment.
- Planning for a bank account, independent financial ledger and establishing the best arrangements for the delivery of all the 'corporate functions' which until now have been carried out by the public body.
- Analysing risks and proposing mitigating actions.
- Establishing the necessary business development capacity.
- Putting in place appropriate arrangements for measurement, monitoring and managing impact.

Staff

- Analysing skills and setting out plans for professional development.
- Understanding whether staff can be admitted to the NHS, Local Government or other Government Pension Scheme.
- Describing how staff will be empowered to shape the culture of the new enterprise.

- Understanding level of staff sickness, turnover, and recruitment and relationships with any volunteers.

Finances and resources

- Projecting five year income and expenditure (profit and loss), cash-flows and balance sheet, with variable assumptions and stress testing.
- Understanding direct and indirect, fixed and variable costs, including inflation.
- Identifying of assets and other equipment.
- Understanding of whether premises will be owned or leased, transferred or bought (at market value or less).
- Predicting income streams, timing and certainty of payments and establishing a pricing model.
- Clarifying tax (e.g. VAT) implications, working capital and investment requirements.

Communications, stakeholders

- Analysing stakeholders and creating an engagement strategy
- Planning for new branding and establishment of corporate identity.
- Creation of a marketing plan.

External support and expertise

For some areas of the plan you are likely to need external support. If you are engaging lawyers, accountants or business planning experts, it makes sense to speak to a number of different potential partners and to ask others for references and recommendations.

It is also important to ensure that while you will benefit from others' expertise, the business plan is yours and meets your needs. For example, you must understand the financial planning as you will be running the new enterprise.

You may also want to send draft sections to your stakeholders for their input. This can help improve your business planning and also help stakeholders feel part of the planning process.

More about business planning can be found in the resources section.

Working with external providers

You may want to think about the following questions when working with external support providers:

- Do they have a track record of working with mutuals and social enterprises?
- Have they worked with a spin-out venture before?
- Do they know your service area?
- Have they worked with an enterprise of a similar size before?
- Do you get on?
- Do you trust them?
- Will they be paid by the day or for completing the job?

Competing for a contract

If you are in the position where you have to compete for a contract, you are likely to be doing it at the same time as undertaking your business planning. There is no business if you don't win the right to deliver the services. But many of the answers you will include in your bid will also be considered as part of your business planning.

Ensure that you, your commissioners and HR colleagues agree on how to mitigate potential conflicts of interest, especially if you are bidding for a contract when you are still within the public authority. Can you use work time to prepare a bid? Is information available to one potential bidder available to all? Are you allowed to work with potential external bidders?

You should also make sure that your commissioner is aware of the latest guidance on how to evaluate track record in bids. Some commissioners assume that three years' independent track record is a pre-requisite for a successful bid.

But this needs to be challenged as procurement rules allow greater flexibility than many assume - more about this can be found in 'Working With the Public Sector: Busting The Myths', available from www.socialenterprise.org.uk.

Checklist

Have you drawn up a plan for your business planning?

Do you know who is leading which area of work?

How will you work with external experts?

Are you asking stakeholders to feed in to your business planning?

Do you know if you will have to compete for a contract?

Are rules of bidding understood?

Are you starting to develop a plan for the transition phase?

Legal forms

It is important not to concern yourself too early about which legal form you will choose. This is just one element of your business planning. And the legal form you may have in mind could change as you progress your journey.

You may discover that a particular form has tax implications and change your preference. Staff and the local community may react to your proposal in a way that makes another legal form more likely than the one you originally expected.

Or you may end up creating a number of different legal vehicles. There are a number of legal forms that social enterprises use. The most common include:

- **Industrial and provident societies**
- **Company limited by Guarantee**
- **Company Limited by Share**
- **Community Interest Company (CIC), which is a form of limited liability company designed specifically for social enterprises, (these can be either limited by guarantee or shares).**

Charitable status is also an option, although not a company structure.

There can be advantages and disadvantages to each legal structure. Some legal structures, such as the Community Interest Company, provide intrinsic protections for your social objectives including a community interest test and an asset lock. Some give a degree of control to a range of stakeholders, be they your staff, patients or community. And others are limited in the type of finance they can attract, for example.

Making the change

The business planning process should help you answer questions you have about the viability of running a mutual or social enterprise. But until now, you haven't taken your first steps. Now the hard work starts in actually setting up the business and making your plans happen.

This is where your plan for transition comes in. Your transition plan is likely to include a number of the following activities.

Legal

- Creating the company or society (in the case of many co-operatives, this is through the establishment of the Memorandum of Understanding and Articles of Association (Mem and Arts) or Rules.
- Issuing shares in new company, if appropriate.
- Recruitment and meeting of a 'Shadow Board'.
- Registration with the appropriate regulatory bodies, such as the Charity Commission, Care Quality Commission, Financial Services Authority and/or Companies House.
- Negotiation of a 'Business Transfer Agreement' this formalises which assets and liabilities (including Intellectual Property) will be transferred to the new enterprise and which will remain with the parent organisation. Do not assume you will be allowed to transfer assets below market price. Any asset transfer should be considered in the light of the contract for services as well as any liabilities which are also transferring.
- Agreeing contracts, leases and Service Level Agreements for corporate functions, such as IT, finance and payroll.
- Agreeing service contracts, including financial arrangements and performance management.

Finances

- Clarifying the tax conditions for the new enterprise, such as VAT.
- Agreeing the budget for the first year of operations.
- Putting in place internal and external auditors.
- Negotiating the appropriate percentage of overheads of the parent organisation to which the new enterprise is entitled (note on phased approach).
- Setting up bank account and working capital facility.
- Agreeing terms of additional investment with independent finance providers.

Staff

- Undertaking staff ballot, if appropriate.
- Continuing staff engagement.
- TUPE consultation and transfer.
- Agreeing new job descriptions, objectives and performance management arrangements.
- Establishing pension scheme for existing and new employees.
- Advertising and recruitment of new posts.
- Creation of documents including a staff handbook and code of conduct.
- Addressing gaps in Senior Management and Board capability and skills.

Marketing and communications

- Creation of name, and visual identity or 'branding'.
- Design and delivery of a new website and marketing materials.
- Continuing patient and community engagement.
- Communications and stakeholder relations planning.

Assurance

- Securing permission from the parent organisation and any other assures, such as the Strategic Health Authority, to spin out.
- Overcoming any preconditions to launch.

Systems

- Establishing cash management arrangements.
- Creation of independent accounting system.
- Agreeing payroll arrangements.
- Creation or transfer of Information Technology systems.
- Purchasing processes systems.
- Putting in place necessary insurances - for example, clinical negligence or employer's liability insurance.

Negotiations

Some of the financial aspects in the transition phase of the business plan may come down to last-minute negotiations with your parent organisation and/or commissioners.

It may be helpful to think about the incentives and power relationships in this dynamic, which may shape their approach in negotiations:

- **Are those with whom you are negotiating the same people giving you permission to spin-out?**
- **What are their incentives? Do they want to set you up to fail?**
- **What happens if you don't back down in negotiations?**
- **What's in store for their organisation in future?**

Again, this is a good time to take advice from someone who has already done this and we can put you in touch with someone who is willing to tell you more about their experience.

Going live

At this point, you will have successfully navigated the journey and are now a mutual or social enterprise and part of a wider community, albeit with a unique role and history.

Aside from the excitement and fear of delivering on everything in your business plan, dealing with the unexpected, achieving the social impact for which you went into this, you may also want to think about:

- Becoming a member of a representative body, such as the Social Enterprise Coalition.
- Badging your organisation with the Social Enterprise Mark.
- The next stage - growth and development.
- Helping those now embarking on the journey you have been through.

Your relationship with your parent body will now start to change. You will become just one of a number of players in the market and your parent organisation may find it difficult to 'let go'.

But as a promoter of the new social enterprise they will want to see you succeed, not least because they will want service delivery to continue. The mind-set of the leadership of the new enterprise will also start to change as it stands on its own two feet, and begins to think and act more commercially.

As Craig Dearden-Phillips of Stepping Out says: "Benefits depend on how quickly the management of these ventures make the vital mental shift required, from the skills needed to succeed in the public sector to those necessary to win in business."

We hope you have found this guide useful. Good luck!

Frequently asked questions

What if my line manager is not supportive?

You may be able to bypass your immediate management and go directly to your senior management or Board. You may have to do this to move forward – it does happen sometimes. But you should properly consider and weigh up the risks and benefits of bypassing them.

As with all stakeholders, it is best if you can develop a constructive and supportive relationship with your direct management. While it's possible that they may never support your plans, it is probably important that they understand what you want to do and why.

Think about how you might use other stakeholders to influence your manager. Who do they listen to? Whose opinions do they care about? It might be a member of the Council, service users or commissioners, for example.

What happens if the business fails?

Like all enterprises, social enterprises can fail. There are two big questions here – what will happen to the service and what will happen to the employees? If the public authority has a statutory duty to provide the service then, in the case of failure, the commissioners and others will take the necessary steps to ensure continuity of service. If there is no statutory duty, it is likely to be at the discretion of the commissioners - depending on budgets, other priorities and local politics.

This will also determine what happens to the staff, who may get taken back in-house, transferred to a new provider, or they may lose their jobs. As a Director of an employee-owned business you will only be personally liable if you are negligent in your duties, for example, by continuing to trade while insolvent.

Will I have to tender to deliver the services I currently provide?

It partly depends on which services you provide. There is considerable confusion about this issue and practice varies across the country. A public authority may choose to go out to tender, even when a tender process is not required by EU law. In many cases, there will need to be a formal competition, such as a procurement exercise, for the provision of services. But sometimes there may be greater flexibility, depending on the type of services, the size of the contract, and the authorities' willingness to consider other options - such as framework agreements, joint ventures or public sector trading arm. You should try to establish as early as possible in their journey the route you will have to navigate in order to secure a contract.

How will my terms and conditions be affected?

Frequently, if part of a business or service is being transferred, your existing employment contract will be protected under the Transfer of Undertakings (Protection of Employment) Regulations, known as 'TUPE'. Under TUPE, you should be guaranteed that your job transfers over to the new company. Employment terms and conditions transfer, and continuity of employment is maintained. It depends upon the circumstances, your new employer does not have to continue an identical company pension.

How will it affect services for my patients / community?

Again, this will depend upon the circumstances. Many groups of staff opt to pursue a mutual or social enterprise model in order to deliver a better service to patients and the community. Patients and the community may be better represented through the new governance arrangements. It may be useful to establish a community engagement forum or invite local representatives along to meetings. This will be particularly important if the plan is for the new enterprise to embody a community ownership model.

How long does the journey take?

It varies from case to case. Generally, however, you might expect the journey to take longer than three months in order to have enough time for you to undertake the necessary planning and preparation. Over a year and the process can become frustrating, costly and dispiriting.

How much does it cost to plan and set-up the new enterprise?

Again, this varies. For a small service it may only cost a few thousand pounds in time and resources. For a multi-million pound service with national significance and considerable risks, for example, it may cost hundreds of thousands.

Costs can be incurred at each stage, in business planning or tendering, in setting up, and with launch. It is important to think through and seek advice on these costs, and try to identify how you can pay for them before embarking on the journey.

Which legal form is best?

There is no best legal form. There are a number of legal forms that social enterprises use. Each can have advantages and disadvantages in different contexts. Don't worry too early in the process about which legal form you will choose. This is just one element of your business planning. You may end up creating a number of different legal vehicles.

Further resources

Co-operative Business District: a guided journey to discover your own public service co-operative destination.

Co-operatives UK. May 2011.

How to become and employee owned mutual – an action checklist for the public sector.

Office of Public Management. March 2011.

Legal Process “map”.

Asset Transfer Unit. December 2010.

New models of public service ownership: a guide to commissioning, policy and practice.

Office of Public Management. August 2010.

Procurement guide for commissioners of NHS-funded services.

Department of Health. July 2010.

Social Enterprise and the Public Sector; A practical guide to law and policy.

Antony Collins Solicitors. 2007.

Social Enterprise - Making a Difference: a guide to the Right to Request.

Department of Health. November 2008.

Special Report on Developing a Mutual for Local Authority Service Delivery.

TPP Law. November 2010.

The Journey: Becoming a Mutual or Social Enterprise.

Local Partnerships. October 2010.

The Right to Request; Making an expression of interest: Guidance and Template.

Department of Health. November 2008.

Transitions: Social Enterprise public services.

Social Enterprise London. August 2010.

Social Enterprise Coalition

We are the national body for social enterprise. We are a membership organisation. We offer business support, do research, develop policy, campaign, build networks, provide training, share knowledge and understanding, and raise awareness of social enterprise and what it can achieve. Our members come from across the social enterprise movement – from local grass-roots organisations to multi-million pound businesses, as well as the corporate and public sectors. What unites them is their commitment to changing the world through business. They enable us to do what we do – both by paying membership fees and taking part in our work.

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Department of Health

www.dh.gov.uk/socialenterprise

Right to Run

A practical guide for public sector staff thinking about setting up a mutual or social enterprise

This guide has been developed by the Social Enterprise Coalition for public sector staff thinking about taking up the opportunities being offered them to provide services themselves, independently of the public sector, by setting up a mutual or social enterprise. It aims to be of use to staff in Local Authorities, NHS Trusts and other public bodies; from frontline clinicians and corporate services professionals through to senior managers, board and council members.

This is not a policy document. It doesn't prescribe a set of rules or dictate how the journey must evolve. Nor does it contain specialist legal or financial advice. It aims to provide groups of public sector staff with a simple, practical how-to guide to help them on their journey. It also explains some of the potential pitfalls and risks, as well as the opportunities that come with 'spinning out' of the public sector.

If you found this guide helpful you may also like to read 'Social Enterprise Explained – for beginners, wonderers and people with ideas, big and small' and 'Enjoy What you Do - work in social enterprise'.

Available to download from www.socialenterprise.org.uk

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