



**Memorandum to the Communities and Local Government
Commons Departmental Select Committee**

**Government response to the Communities and Local Government
Select Committee's Report: Mutual and co-operative approaches
to delivering local services**

Presented to Parliament
by the Secretary of State for Communities and Local Government
by Command of Her Majesty

February 2013

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Memorandum to the Communities and Local Government Commons Departmental Select Committee

Government response to the Communities and Local Government Select Committee's Report: Mutual and co-operative approaches to delivering local services

Introduction

This Memorandum has been prepared by the Department for Communities and Local Government for submission to the Communities and Local Government Departmental Select Committee in response to their report 'Mutual and co-operative approaches to delivering local services', published on 6 December 2012.

The Government welcomes the Select Committee's report on mutual and co-operative approaches to delivering local services. We want to grow and expand the potential mutual and co-operative models for delivering services as part of the Open Public Services agenda. We believe that opening local services to as wide a range of potential suppliers as possible is beneficial for both service users and tax payers and early evidence on mutuals clearly suggests that they can produce efficiencies, improve productivity and improve staff and user satisfaction.

The Cabinet Office leads work to support the creation and expansion of employee-led mutuals in the public sector. The rate of growth is increasing quickly – from nine in 2010 to 66 in January 2013. The Cabinet Office has engaged with, and provided advice to over 70 local authorities with an interest in supporting employee-led mutuals to deliver services.

The mutuals agenda is gaining significant traction across local government. Nineteen public service mutuals have already spun out of a wide range of local government services, including adult social care, libraries, children's services, housing, integrated health and social care. There are huge opportunities for the sector to transform services through mutualisation and we see increasing evidence of an appetite to match from both local authority commissioners and staff.

There has been particular interest in mutualisation of social care services as authorities seek to transform the way that core services such as these are delivered more efficiently. The Cabinet Office and Department for Communities and Local Government are also working closely to remove barriers to enable fire

and rescue authorities in England to mutualise services and contract to provide the full range of activities.

The Community Right to Challenge clearly complements the work to support formation of new employee-led mutuals in local government by providing a mechanism for local authority employees to set out their proposals for delivering services as a mutual. The Community Right to Challenge will be particularly useful to local authority staff who feel that their ideas are not being listened to by their parent authorities.

The Department for Communities and Local Government is funding a programme of advice, specialist support and grants worth £11.5 million in total until March 2015. The programme is run by a consortium led by the Social Investment Business. The programme is open to local authority staff seeking to use the right or to understand the options for establishing an employee mutual. Since July, over 900 groups have contacted the advice line, of which 15 were existing or potential local authority mutuals. Of the 15 mutuals, 5 have been referred for specialist advice and we have awarded grants to two employee mutuals seeking to challenge to deliver local authority services to date.

This response sets out our response to specific comments and recommendations addressed to government. Other recommendations are not directly addressed.

Specific recommendations for Government

The evidence we received suggested that a small number of local authorities are using or have established mutual or co-operative bodies to deliver their services. There appears to be confusion in local government and beyond about what constitutes a co-operative or mutual service delivery organisation. (Paragraph 15)

The challenge for local government is to extend open commissioning to services that are not currently open or are currently only partially open.

There is no lack of will among local authorities. 82% of council leaders and chief executives say that they are going to take on a greater role as a strategic commissioning organisation over the next few years, and 89% consider that there are no services or functions considered off limits for future outsourcing.

Cabinet Office have promoted a very clear definition of a Public Service Mutual. A public service mutual is an organisation that:

- that has spun out of the public sector,
- continues to deliver public services
- involves a high degree of employee control

Across local government, awareness of mutual models and their benefits has increased rapidly driven by Cabinet Office work with the sector and key bodies such as the Local Government Association, Local Partnerships and Society of Local Authority Chief Executives. Through a combination of regional conferences, workshops and one-to-one support we have identified a significant upswell of interest in mutuals. For example, since May 2012, the Cabinet Office has engaged over 70 local authorities who are actively exploring mutuals.

As a result we are seeing an increased flow of new authorities accessing support from the Cabinet Office Mutual Information Service and Mutual Support Programme and progressing towards spin out. There are now around 19 live mutuals that have spun out from local authorities, with more in development.

The Mutuals Support Programme is a £10 million fund to provide such help and support. We are making technical advice and other products funded through the programme available through the Mutuals Information Service to help public bodies to learn from others. Already over 117 organisations across the public sector have received dedicated support from their hotline and their information website is attracting around 1,600 visits per week.

A number of regional roadshows have provided opportunities for local government to come together with experts to understand the agenda better.

We share the Government's ambition of encouraging the setting up of more mutuals but we have a number of concerns. First, the Cabinet Office's work so far has been limited to employee-owned mutuals when we have detected interest within local authorities in setting up a wider range of mutuals and co-operatives. Second, we are not convinced that the Cabinet Office and the Department for Communities and Local Government have been operating in step. The links between the Cabinet Office and the Department need to be strengthened so that the Cabinet Office takes full account of the potential for mutuals and co-operatives to deliver services in local government and to ensure that guidance and support is made available to all those interested in taking on local services. We see a role for the Local Government Association in providing the link between this work and local authorities. We welcome the Government's plan to create 15 Mutual Ambassadors and we hope that this will contribute to joined up working. (Paragraph 46)

The Mutuals Support Programme is collating information that could be equally valuable to people considering setting up mutuals and co-operatives beyond the scope of the employee-owned mutuals it currently assists. We noted earlier that the evidence for the success or otherwise of mutuals and co-operatives in delivering local authority services is limited. In our view, the absence of evidence is likely to be holding some authorities back from investigating mutual and co-operative options. We see scope for greater co-ordination between the Mutuals Support Programme, Department for Communities and Local Government and the Local Government Association

in gathering evidence on the operation of mutuals and co-operatives in delivering local authority services and making that available to other authorities. (Paragraph 47)

DCLG and Cabinet Office are working together closely to support the spin out of new mutuals from local authorities and will continue to make the links between the two agendas clearer. The organisations providing support for the implementation of the two policies work together to ensure that the two programmes co-ordinate well.

The Community Right to Challenge provides employees a new pathway for taking on services as public service mutuals in local government and gives local authority employees - as well as community groups and Voluntary and Community Sector organisations and Social Enterprises - the opportunity to challenge the status quo and compete to deliver services.

To date, many new mutuals have spun out in close collaboration with the local authority or parent body. However the Right to Challenge provides a lever for employees, particularly in circumstances where employees' plans to are not supported by the local authority.

Officials from the Cabinet Office and the Department for Communities and Local Government will continue to work together to demonstrate the benefits of employee-led mutuals in service delivery and we will continue to ensure that the advice, information and guidance we produce on this agenda is widely disseminated across local government.

Finance for starting up mutuals and co-operatives is in short supply. Encouragement, advice and guidance will come to nothing without finance. The Government has a responsibility to inform and educate financial institutions, including Big Society Capital, about lending to mutuals and co-operatives and we recommend that it establish a programme to this purpose. (Paragraph 54)

Financial support is available from an increasingly wide array of sources, including funds such as Social Enterprise Investment Fund and the Mutual Support Programme, sector specific national programmes run by various departments, social investment organisations and intermediaries, and commercial lenders. In addition, the Cabinet Office has made a significant amount of guidance available through the Mutuals Information Service, including tools and templates which can be used by mutuals looking to establish and grow their business. The Cabinet Office will continue to provide such guidance, and work with providers of finance to ensure that information on available sources is easily accessible.

We conclude that, while the absence of legal definitions of co-operatives may deter establishment of mutuals and co-operatives, the answer is not a new corporate entity defined in law. That would not only add a layer of

complexity but also introduce a rigidity that could stifle innovation. Instead, we endorse the Nuttall Review's findings and we recommend that the Government produce a set of 'off the shelf' models, with supporting guidance to be made available to those interested in establishing a mutual or co-operative. We envisage that these would provide an easy route to understanding the tax and administrative burdens that starting up a business might present. We also recommend that these models encompass mutuals and co-operatives beyond the employee-owned mutual and take account of those considering the delivery of local services. (Paragraph 58)

The Cabinet Office is committed to providing a range of guidance and support material to those interested in mutualisation. The Mutuals Information Service hotline is able to advise on a range of areas, while documentation is housed online in a Knowledge Exchange on their website. This repository includes guidance created by both Government and third-parties, thereby ensuring a diverse range of information, and dissemination of best practice by existing mutuals

The Government needs to clarify how EU procurement rules apply to mutuals and co-operatives to ensure that they have the maximum flexibility. In its response to our Report we ask the Government to explain how the Italian derogation we cite might be applied to the procurement process in the UK, particularly for mutuals and co-operatives competing for contracts for local authority services, and what changes to EU procurement rules it is pressing for. (Paragraph 63)

The Government continues to press for flexibility in the European Union procurement rules to allow employee mutuals time to become established prior to being subject to full competition. We believe that this will give new mutuals the opportunity to develop their commercial capability to complement their professional expertise and commitment in order to successfully compete in full procurement exercises. European Union member states agreed to the introduction of time limited provisions reserving contracts for mutuals at the December 2012 Competitiveness Council and this will now need to be agreed with the European Parliament.

We consider that not only employee ownership, but the other benefits of co-operative approaches, including greater user and community involvement in local service delivery, offer social value which needs to be considered in procurement exercises. The Government should amend its Statutory Guidance on the Community Right to Challenge and its guidance on local authority procurement to reflect this. (Paragraph 64)

Authorities carrying out a procurement as a result of a successful Expression of Interest under the Community Right to Challenge must consider social value. The Social Value Act, which came into force on 31 January 2013, requires public authorities to consider social value in the pre-procurement stage. The Cabinet

Office published a Procurement Policy Note on the 20 December 2012 which sets out the steps that commissioners and procurers should take as a result.

The Social Value of a commissioning exercise or procurement is defined within the service itself and its outcomes – not the legal identity of the organisations tendering. Primarily, the role of government is to create an open framework to support a diverse range of providers to deliver the public services people want. There is no ideological presumption in favour of one particular sector delivering services. It is not the job of government to specify which sector delivers what service.

The nature of co-operatives and mutuals may make them better placed to deliver social value, but this must be tested objectively in the procurement process. We are encouraging local government to respond positively to this Act and the Minister for Civil Society will be writing to local authorities shortly.

We do not consider it evident that local authority staff lack the entrepreneurial inclination to establish mutuals and co-operatives, rather we see that staff lack the skills and understanding required to embark on the process of setting up mutuals. Establishing an organisation to take over the delivery of a local authority service which might be heavily regulated or carry statutory obligations can be a daunting prospect. We welcome the Cabinet Office's objective to use the Commissioning Academy to address the skills gap in procurement and we agree with the Mutuals Taskforce report that the Cabinet Office through the Mutual Support Programme should target the broader development of commercial and other skills for public sector employees necessary to allow them to develop mutuals and co-operatives. We recommend that the Government outline in its response how many local authority officers it expects to train through the Academy. A better understanding of procurement might allay the fears of those in management positions who are unwilling to encourage staff to think about these options. (Paragraph 70)

Council Leaders and Chief Executives tell us that there is a lack of commissioning skills in local authorities and that there are many unhelpful entrenched procurement 'behaviours'. We have developed a package of measures to tackle these barriers.

The Commissioning Academy launched on 31 January is a practical development programme for commissioning organisations in the public sector. The Academy will help leaders gain the confidence and capability they need to transform organisational culture and address cross-cutting issues in order to design and deliver the best public services. Up to 2,000 public sector employees will pass through the Academy over the next three years. There is no specific target for the number of local government commissioners passing through, but over half of the graduates from the pilot cohorts are from local government.

To support local authority commissioners, Cabinet Office have established the Local Authority Mutuals Commissioners' Group to provide insight and practical solutions that others can learn from. It consists of local authority commissioners currently working with a mutual spin-out project and has a local authority commissioner chair – currently Joanne Hay, Tri-Borough Children's Service Commissioner. Its role is to:

- Provide **challenge** and steer regarding local authority mutuals and support requirements
- **Collaborate** with peers and central government to address challenges/barriers to 'spinning out' from a commissioning perspective
- **Champion** the agenda and communicate the business case for mutuals more widely across the local government sector.

The group has also contributed to the development of a commissioner hub on the Mutual Information Service website. This is a hub for information, tools, case studies and peer networks supporting commissioners through every step of the journey - from pre-feasibility to spin out and beyond.

<http://mutuals.cabinetoffice.gov.uk/support-tool-box-developing-approach>

DCLG are also working with other departments to develop free e-learning resources for all local authority commissioners.

There will be many cases where there is a strong financial case for allowing assets to transfer because they will provide a mechanism for financing new start-ups. However, there are risks in transferring assets to private sector bodies. Assets might be poorly managed and stripped or lost entirely if an organisation is bought out. On balance, we consider that the financial benefits of transferring assets in many cases outweigh the risks and there should not be a general block on such transfers. The Government must work to provide guidance, to assist those commissioning services and those starting up services, on the circumstances and conditions by which assets can be transferred and, if necessary, returned to the local authority.

An asset lock is designed to ensure that the assets of the organisation (including any profits or other surpluses generated by its activities) are used to support the aims and objectives of their mission statement. The organisations that are automatically subject to an asset lock are: Trusts; Community Interest Companies; Industrial and Provident Societies and Charitable companies.

Where a local authority is transferring an asset to a mutual as part of a service contract, they are able to put an asset lock on any asset they transfer. These do not prevent a body from borrowing against or selling that asset in future as long as the proceeds are used to promote the core charitable aims of that body. It is ultimately down to authorities to ensure that they put in proportionate levels of protection for such assets when they are drawing up these contracts.

The Mutuals Information Service provides access to advice and guidance on legal structures, including those which offer the option of an 'asset lock' to ensure that the value of an asset is not lost. Local authorities and potential mutuals will need to seek their own advice but we will continue to add to the tools and guidance available.

It is possible that some mutuals or co-operatives may become uneconomic and fail. The resulting loss of assets, the loss of employment and the loss of the service for residents would be detrimental. It could damage the 'co-operative brand' and deter other authorities from adopting these models. It might also require that local authorities are ready to step in to take control of failing services. When commissioning services from mutuals and co-operatives local authorities should take care to provide that the staff, service and assets, when they were originally owned or delivered by the authority, of a failing mutual or co-operative could be brought back under their control. This should be reflected in government guidance. (Paragraph 91)

If a supplier of any form fails, the commissioning authority will be responsible for ensuring service continuity. This is no different from established service continuity planning. Where asset locks exist, then the asset will be put in a trust to preserve its original purpose. Local authorities will need to ensure that adequate contract management procedures are in place to manage performance. Excessive restrictions as suggested within contracts may prevent a mutual from becoming competitive and create uncertainty, impacting on their ability to become commercially successful in the future.

Conclusion

Mutuals and co-operatives providing local services are not being set up in significant numbers. From the small number of mutuals and co-operatives in the local government sector the evidence is encouraging but it not sufficient either to demonstrate conclusive improvements in service or that savings can be made or that benefits in engagement and accountability will follow. The necessary critical mass will be slow to build up without more and better support. The Government has a choice, if it wants more mutuals and co-operatives to develop: it must take action to provide support. Without additional assistance it seems likely little will happen. Our recommendations aim to encourage a joined-up strategy for the collection of evidence and dissemination of best practice and tested models and to break down the barriers currently holding authorities back. The Government needs to implement these urgently if it wishes to encourage more authorities to take an interest in mutual and co-operative working. (Paragraph 94)

The Mutuals agenda has seen an acceleration over the last few years. The number of established mutuals has increased seven-fold from 9 in 2010 to 66 today, with mutuals are now appearing in around 13 different sectors. Whilst this is a good indication of the success and sustainability of the agenda we know that

there is still work to be done and we will continue to provide support, share learning and tools as well as direct support and funding to make this agenda an ongoing success.

The Government will continue to provide support and guidance to local authorities and staff members of authorities who wish to create employee led mutuals. Advice and support are available through the Mutual Support Programme and the Community Right to Challenge Support Programme. Officials from the DCLG and Cabinet Office are working together to promote this agenda and to move new and potential staff mutuals towards the right sources of advice. We have a programme of work in place to support and encourage more open approaches to commissioning in the public sector as a whole, including local government.



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