



Department for
Digital, Culture,
Media & Sport

Consultation on the future definition of public service mutuals

July 2019

About This Consultation

To:

The government welcomes responses to this consultation from all those with an interest in public service delivery, in particular public service commissioners and delivery organisations, staff, users and communities, as well as industry bodies that represent these groups.

Duration:

18 July 2019 to 30 September 2019

Enquiries:

mutuals@culture.gov.uk

How to respond:

Please send responses to mutuals@culture.gov.uk by 9.00am on 30 September 2019.

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Ministerial Foreword



The government is committed to developing a more diverse marketplace for public service provision, harnessing the finest talents from across the public, private and social sectors. Public service mutuals (mutuals) are organisations that have left the public sector, continue to deliver public services and have a significant degree of employee ownership, influence or control. They are making an outstanding contribution to public service delivery, combining public sector and social values with empowered front line staff who have the freedom to shape the services they deliver.

Since 2010, the government has been providing support for mutuals to emerge and grow. The first wave of support included 12 pathfinder projects in community health, housing services, social work and youth services. We have built on the success of the pathfinders with two Mutuals Support Programmes, providing legal advice and strategic support to help mutuals on the journey from spinning out of the public sector to thriving as independent commercial organisations.

There are now around 120 in England providing £1.6bn of public services every year, from youth services to arts and culture to building control, with the majority of mutuals operating in health and social care. Mutuals have happier, more engaged staff, with lower staff turnover and absenteeism. This is translating to increased productivity and more innovative, responsive and better quality services.

We are seeing growing interest within the public sector in “spinning out” to become a mutual, and in employee-led enterprises more broadly. I would like to build on this and see many more mutuals playing a part in a diverse public service provider landscape. The mutual model is particularly well established in health and social care and there could be further opportunities for it to support developments in primary care.

However, the term “public service mutual” is not well known or understood among communities and commissioners of public services. Now is the time to ask some fundamental questions about what being a public service mutual should mean. We want to define an employee-led, socially-driven and transparent business model that the public sector and wider society can get behind.

Please do take some time to give us your thoughts on our proposals. I look forward to hearing your views.

Warm regards,

A handwritten signature in grey ink that reads "Mims". The signature is written in a cursive, flowing style.

Mims Davies, Minister for Sport & Civil Society

Overview

Public service mutuals (mutuals) are currently defined as organisations that have left the public sector (spun out), continue to deliver public services and have a significant degree of employee ownership, influence or control. Evidence supports the view that mutuals have happier, more engaged staff, increased productivity and deliver more innovative services¹. The government has supported the development of the mutuals sector over the last ten years, with a range of programs designed to help new mutuals emerge and existing ones to grow and diversify.

The current definition of public service mutuals was set by the government in 2010. It is not a definition that is enshrined in legislation, and it does not refer to a specific legal form. It is used by the government to describe a distinct type of business and public service delivery model. Public service mutuals are also distinct from Mutuals as registered and regulated by the [FCA](#), although there are some that may fall under FCA regulation if, for example, they're set up as a co-operative society. This document and consultation refers only to public service mutuals, which are currently defined as organisations that fulfil all of the following criteria:

- originated in, and has subsequently left, the public sector (known as spinning out),
- continues to deliver public services, and;
- has a significant degree of staff influence or control in the way they are run.

Evidence provided to government suggests that there are a number of challenges with this definition. First, the definition is not sufficiently clear or widely understood, particularly among public sector commissioners who make decisions on who secures public sector contracts.

Second, there is a lack of clarity around certain aspects of the definition, in particular around ownership structures and the question of what constitutes 'employee influence'. The consequence of this is that there is a risk that organisations can describe themselves as 'mutuals' which have few of the employee-ownership and participation characteristics that are at the essence of the mutuals model. This risks undermining commissioner confidence in the concept of 'public service mutuals'.

Third, the current definition of public service mutuals is limited to only those organisations that have 'spun out' of public services. The government has a policy of promoting a more diverse public sector delivery marketplace, and believes that employee-led social enterprises that have originated elsewhere have an important contribution to make to this. The current definition excludes these organisations from being identified as public service mutuals.

¹ "Public Service Mutuals: State of the Sector 2019 - GOV.UK." April 2019, <https://www.gov.uk/government/publications/public-service-mutuals-state-of-the-sector-2019>.

Mutuals have sometimes been unfairly criticised as representing a form of ‘backdoor privatisation’. This is not the case. The principles at the core of the mutual model - being rooted in a social mission (92% of collective profits were reinvested in the last year²), and empowering front line employees - mean that mutuals represent a distinct kind of public services provider from traditional commercial organisations. Greater clarity and understanding of the model will help to dispel this perception of mutuals.

Given these challenges, the government believes that the contribution that public service mutuals can make to public services can be strengthened by creating a more robust definition and brand identity. The benefits of a clear definition will be:

- To strengthen the integrity of the concept of ‘public service mutuals’. Doing this will give public service commissioners and broader stakeholders increased confidence that mutuals represent the values government wants to see in public service delivery.
- Provide greater clarity for social sector organisations on what the organisational requirements are in order to be considered a public service mutual.
- Raise awareness and understanding of the benefits of the mutuals model, informing decisions about who delivers public services.

The proposals would also improve the alignment between mutuals and public contracts regulation 77³, which allows for the reservation of competition for public sector contracts to organisations which satisfy criteria based on employee participation and profit reinvestment.

Following this consultation, the government will publish a revised definition that reflects current priorities for public services. The government has considered whether a formal accreditation scheme for mutuals would help to strengthen the achievement of these benefits. It has concluded that a statutory accreditation scheme operated by the government would create costs for both government and social sector organisations, with limited additional benefits. It would also risk making it harder to amend the definition as new evidence and experience emerges. In this consultation, the government invites views on whether there are any alternative accreditation or verification mechanisms operated externally that might be helpful, without imposing significant costs or inflexibilities.

In developing proposals for a revised definition, the government has worked with an independent Mutuals Advisory Group, made up of mutual practitioners, academics, and representatives from relevant industry bodies, as well as representatives from the mutuals sector and local government. The proposals set out in this document tighten some aspects of the definition and broaden others. The aim is to strike a balance between maintaining the core values of mutuals, and supporting the sector to thrive in a competitive market.

² ["Public Service Mutuals: State of the Sector 2019 - GOV.UK." April 2019](#)

³ [The Public Contracts Regulation 2015, UK Statutory Instruments, 2015 No. 102, PART 2, CHAPTER, SECTION 7, Regulation 77](#)

This document proposes a number of changes to the current definition, broadly seeking two objectives:

- To widen the definition to include organisations that don't originate in the public sector.
- To strengthen and clarify requirements around employee influence, independence, and the distribution of profits.

The detailed proposals are summarised below, and set out in more detail in the rest of the consultation. None of the proposals require legislative changes. In tandem with this consultation, the government will consider further whether there are additional implications which need to be taken into account before reaching a settled position when it responds to the consultation.

As explained above, this document refers exclusively to public service mutuals, though will use the shorthand 'mutuals' throughout for the sake of brevity.

Table: Summary of proposed changes

Theme	Current	Proposed
<i>Origins</i>	Must have originated in the Public Sector	No need to have originated in public sector
<i>Employee Influence</i>	Must have a significant degree of employee ownership, influence or control in the way it is run	As now, but with specified minimum requirements
<i>Public Service Delivery</i>	Must continue to deliver public services	Must operate for social or environmental benefit, in line with social enterprises more broadly
<i>Ownership</i>	No specific requirements	At least 51% of the organisation must be independent or employee/community/user owned
<i>Profit Distribution</i>	No specific requirement	Must reinvest the majority (51%+) of profits into its mission
<i>Formal Recognition</i>	No formal accreditation	Views on this point are welcomed
<i>Naming Convention</i>	'Public Service Mutuals'	Views on this point are welcomed

1. Origins of public service mutuals

The current definition states that mutuals “must have originated in the public sector”. Government proposes to remove this stipulation. This definition originated in the focus of the government’s public service reform programme on the contribution that mutuals could make where these had spun out of the public sector.

The government’s public service reform priorities now include a focus on creating a diverse marketplace for the provision of public services. The evidence on the effectiveness of employee owned or controlled enterprises in delivering public services means that these organisations have an important contribution to make as part of this diverse marketplace, even where these organisations have not spun out of the public sector.

The current definition of mutuals therefore limits the potential scale of the mutuals sector in the marketplace for public services. Removing the requirement to have originated in the public sector will be a step towards growing the amount of employee-led organisations playing a role in public service delivery.

1a) Question: Do you agree to removing the requirement for mutuals to have originated in the public sector?

1b) Question: Please provide further information to support your response.

2. Employee influence and control

Government proposes taking steps to strengthen the criteria for what constitutes significant influence or control, putting in place the following minimum requirements:

- *Direct staff ownership - using tax advantaged share plans, employees become registered individual shareholders of a majority of the shares in the company, or;*
- *Indirect staff ownership - shares are held collectively on behalf of employees, normally through an employee trust;*

Or two or more of the following:

- *Elected staff to the Board of Directors*
- *Staff and/or member voting rights*
- *Formalised staff forum with direct links to the Board*

Government believes in empowering passionate and dedicated front line staff to shape the services they deliver. There is strong evidence of the advantages of the involvement of employees in running an organisation. The Employee Ownership Association makes the case for employee ownership in a report published in 2018, demonstrating that the 'ownership dividend' translates to engaged workforces, higher productivity and resilience based on long term stewardship of value⁴. This reflects a growth of the employee owned sector generally⁵. Research conducted by Social Enterprise UK (SEUK)⁶ echoes these findings for what mutuals are bringing to public service delivery: engaged staff driving productivity growth with innovative and flexible services.

The current definition of public service mutuals does not specify what 'significant employee influence or control' means in practice. This flexibility has enabled a range of models to develop to suit local circumstances and service areas. These range from formal structures and procedures (share ownership, voting rights, elected staff Directors) to informal, cultural ways of working (staff suggestion schemes, open door policies).

Although the majority of mutuals are combining elements of both formal and informal mechanisms to a high standard, evidence suggests that a minority of organisations that are describing themselves as mutuals are doing so in the absence of a substantive element of employee ownership or control. This risks undermining confidence in the brand and identity of mutuals.

It is important to note that many mutuals incorporate ownership, influence or control by community

⁴ "The Ownership Dividend - Employee Ownership Association."
https://employeeownership.co.uk/wp-content/uploads/The_Ownership_Dividend_The_economic_case_for_employee_ownership.pdf. Accessed 31 May. 2019.

⁵ "The Ownership Dividend - Employee Ownership Association."
https://employeeownership.co.uk/wp-content/uploads/The_Ownership_Dividend_The_economic_case_for_employee_ownership.pdf. Accessed 31 May. 2019.

⁶ "Public Service Mutuals: State of the Sector 2019 - GOV.UK." April 2019,
<https://www.gov.uk/government/publications/public-service-mutuals-state-of-the-sector-2019>.

and user groups in their governance structures. Although the government is not proposing to make this a formal requirement, it fully endorses community and user ownership, membership and engagement as a way to bring public services closer to the communities they serve.

2a. Question: Do you agree with tightening the requirements on employee influence in line with the above?

2b. Question: Please suggest any changes you'd make to the requirements above.

2c. Question: Please provide further information to support your response.

3. Mission and Profit

Government proposes to remove the requirement that mutuals must 'continue to deliver public services', and replace it with 'have a clear social mission set out in their governing documents'.

It is important that mutuals maintain a commitment to their social mission. The current definition requires mutuals to 'continue to deliver public services'. Our proposal to remove the requirement to have originated in the public sector raises the question of whether and how mutuals should be connected to public service delivery.

Attempting to tie mutuals to the delivery of public sector contracts would preclude organisations that deliver services widely considered to be 'public services', but are not funded directly through public sector contracts (e.g. adult social care funded through personal budgets). Government wants to avoid being overly prescriptive about the activities mutuals undertake whilst maintaining the social values that make them a distinctive and important part of a mixed market place.

3a) Question: Do you agree to replace must 'deliver public services', with must have 'a clear social mission outlined in their governing documents'?

3b) Question: Please provide further information to support your response.

Government proposes aligning mutuals with social enterprise guidance requiring that organisations reinvest the majority (51%+) of their profits into their mission.

There are differing views on the role of profits in public services, and mutuals are sometimes criticised by representing a form of 'backdoor privatisation'. Mutuals benefit from the freedom and incentives to generate profit. The engagement process prior to this consultation has also made it clear that maintaining a social purpose is an important driver in making mutuals successful. The fact that 92% of mutuals' profits in the last year were reinvested into the organisation, their mission or development shows that mutuals are socially oriented organisations at their core. The requirements we propose will enshrine the behaviour we are already seeing.

The government is taking steps to strengthen the emphasis on social value in commissioning, and has consulted on how to take account of social value in the award of central government contracts. The growing emphasis on social value in commissioning means that organisations which are able to demonstrate social credentials will play an increasingly important role in public service delivery. It is also true that most mutuals describe themselves as social enterprises.

Government is aware of the challenges that some socially oriented organisations experience when attempting to access external investment, which can limit their ability to grow and deliver further benefits to society. It is important that the right balance is struck between maintaining mutuals' social purpose and the ability to access the capital required to succeed and grow as organisations. Government welcomes views on whether that balance has been struck in these proposals.

3c) Question: Do you agree that government should make it a requirement that mutuals are social enterprises, and therefore reinvest the majority (51%+) of their profit into their mission?

3d) Question: Please provide further information to support your response.

3e) Question: Would the proposals outlined in section 3 limit the potential for investment in the mutuals sector?

3f) Please provide further information to support your response.

4. Independence and Ownership

Government is proposing to set a minimum ownership requirement, that at least 51% of a public service mutual must be employee, community or user-owned. This 51% could not be owned by either a public sector organisation, or a private sector organisation that is not an employee, community or user owned entity. Such an entity could be an employee ownership trust, co-operative, social enterprise or charity. This would leave up to 49% to be owned by one or more public or private sector organisations, if this was desirable for the mutual.

Most existing mutuals are fully independent organisations. However, some have a mix of private and employee ownership and increasing numbers of public sector organisations are considering setting up wholly or majority owned subsidiaries that operate with mutual principles.

In this context, there is an issue of the extent to which some ownership or control by a public authority dampens some of the aspects that make mutuals high performing organisations. There is a strong sense amongst mutuals that independence from public sector control is an important factor for success, affording them the freedom to operate in a way that is conducive to designing innovative services and responding in an agile way to evolving needs.

Where majority control is held by the private sector, this risks leaving the organisation open to excess profits or assets being diverted from its social mission, or, at the very least, diluting the perception and transparency of the mutuals brand. There are several mechanisms that could be put in place to hardwire in the social credentials of mutuals. These include mandating legal forms, mandatory or voluntary asset locks, or setting minimum ownership requirements.

Government wants to strike a balance between the operational freedom and commitment to a social mission, whilst providing the opportunity for mutuals to build relationships with other public and private organisations and giving them a wider range of options when looking for strategic partners or investment to fuel growth.

4a) Question: Do you agree that at least 51% of a public service mutual must be employee, community or user-owned. This 51% could not be owned by either a public sector organisation, or a private sector organisation that is not an employee, community or user owned entity. Such an entity could be an employee ownership trust, co-operative, social enterprise or charity.

4b) Question: Do you think there any other mechanisms should be implemented to future-proof the character of a public service mutual?

4c) Question: Could you provide further information to support your response.

5. Formal Recognition and Naming Convention

A suggested 'strapline' could be "staff-led social enterprises", in order to capitalise on the growing awareness and understanding of social enterprise⁷ and employee ownership⁸.

Government has explained why having a clear definition is important and set out how the definition could be changed to better reflect the current environment.

Engagement with the mutuals sector when preparing this consultation highlighted that the term 'public service mutuals' has limited traction in public sector commissioning circles and can be confusing. Government therefore wants to assess, with a broader audience, whether maintaining a distinct name and brand for public service mutuals is appropriate, and whether the proposals above will be sufficient in providing clarity among commissioners. Government could also consider adding a "strapline" to provide further clarity.

5a) Question: Do you think that the proposals outlined in this consultation could alleviate the confusion currently experienced by commissioners around public service mutuals?

5b) Question: Do you think the government should consider adding a strapline of "staff-led social enterprises"?

5c) Question: Please provide further information to support your responses.

There is also the option of establishing an external accreditation or kitemark.

The main benefit of this would be to raise awareness and offer clarity to public service commissioners about the benefits of an employee and mission led model. This could strengthen the position of mutuals in a competitive market place for public service delivery.

Government does not propose that it becomes responsible for an accreditation scheme or kitemark for public service mutuals. However, it welcomes views on whether an industry-led accreditation is needed to uphold the new definition, what benefits it could bring, and how it could be implemented.

5d) Question: Do you think that a formal accreditation for public service mutuals is necessary to uphold the newly created definition?

5e) Question: Please provide further information to support your response, particularly in terms of how an industry-led accreditation could function.

Thank you for participating in this consultation exercise.

⁷ "Social Enterprise research" Conducted by YouGov on behalf of Social Enterprise UK. 2016

⁸ <https://employeeownership.co.uk/wp-content/uploads/EOA-2018-Annual-Review.pdf>

Summary of Questions

1. Origins:

1a) Do you agree to removing the requirement for mutuals to have originated in the public sector?

1b) Please provide further information to support your response.

2. Employee influence

2a) Do you agree with tightening the requirements on employee influence in line with the below?

The following minimum requirements to be codified in the articles of association or governing documents:

- Direct staff ownership - using tax advantaged share plans, employees become registered individual shareholders of a majority of the shares in the company, or;
- Indirect staff ownership - shares are held collectively on behalf of employees, normally through an employee trust;

Or two or more of the following:

- Elected staff to the Board of Directors
- Staff and/or member voting rights
- Formalised staff forum with direct links to the Board

2b) Please suggest any changes you'd make to the requirements above.

2c) Please provide further information to support your response.

3. Mission and Profit

3a) Do you agree to replace must 'deliver public services', with must have 'a clear social mission outlined in their governing documents'?

3b) Please provide further information to support your response.

3c) Do you agree that government should make it a requirement that mutuals are social enterprises, and therefore reinvest the majority (51%+) of their profit into their mission?

3d) Please provide further information to support your response.

3e) Do the proposals outlined in section 3 limit the potential for investment in the mutuals sector?

3f) Please provide further information to support your response.

4. Independence & Ownership

4a) Do you agree that at least 51% of a public service mutual must be employee, community or user-owned. This 51% could not be owned by either a public sector organisation, or a private sector organisation that is not an employee, community or user owned entity. Such an entity could be an employee ownership trust, co-operative, social enterprise or charity.

4b) Do you think there any other mechanisms should be implemented to future-proof the character of a public service mutual?

4c) Could you provide further information to support your response.

5. Formal recognition and naming convention

5a) Do you think that the proposals outlined in this consultation could alleviate the confusion currently experienced by commissioners around public service mutuals?

5b) Do you think the government should consider adding a strapline of “staff-led social enterprises”?

5c) Please provide further information to support your responses.

5d) Do you think that a formal accreditation for public service mutuals is necessary to uphold the newly created definition?

5e) Please provide further information to support your response, particularly in terms of how an industry-led accreditation could function.



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**Department for Digital,
Culture, Media and Sport**
4th Floor, 100 Parliament Street
London, SW1A 2BQ
www.gov.uk/dcms