MUTUAL VENTURES

An Overview:

Becoming a Public Service Mutual

Department for Digital, Culture, Media & Sport

Contents

What are Public Service Mutuals?

Public Service Mutuals (mutuals) are organisations that have left the public sector and continue delivering public services. Employee control plays a significant role in their operation. Mutuals enable dedicated public servants to combine their passion for helping others with their desire to provide world-class services, and to do this in a sensible business minded way.

Setting up a mutual may be for you if you're working in the public sector and think that a new model could help you:

- Run a service more effectively, achieving better outcomes for users.
- Deliver a service more efficiently, saving on costs and time.

and if you think that:

- You have identified a gap in service provision.
- You want greater control and autonomy over the service you work in.

Characteristics of Mutuals

Mutuals are organisations which:

- Have left the public sector (also known as 'spinning out').
- Continue to deliver public services.
- Have signifcant employee control and/or influence.

Forms of Mutuals

A mutual can take many forms:

- Social Enterprise.
- Co-operative.
- Charities.
- For Profit.

Why do organisations want to become a mutual?

Evidence indicates mutuals tend to have higher productivity than other organisations, provide better quality services and outcomes, and have high customer satisfaction and improved staff engagement[1]. Services have traditionally had two options when trying to improve their services; remain 'in house' with some re-design or outsource, but these options do not necessarily fix the fundamental problems the service is facing. Mutuals can offer an alternative model of delivery for an organisation and enhance public service delivery.

For employees, being part of a mutual can empower them to use their experience and insights to improve services and tackle social problems in innovative ways. Employees can demonstrate public service entrepreneurship; combining a public sector ethos with commercial discipline to improve the quality of services, often resulting in improved job satisfaction. For service users, mutuals can provide better quality, more effective and responsive services and improved outcomes. For commissioners and taxpayers, they can mean increased levels of partnership working and collaboration.

1 . *Public Service Mutuals: State of the Sector 2018*

Advantages of a mutual

Research and evidence of mutuals

- Mutuals can benefit from less bureaucracy;
- Decisions can therefore be made faster;
- They can then focus on being more innovative to deliver better quality services.

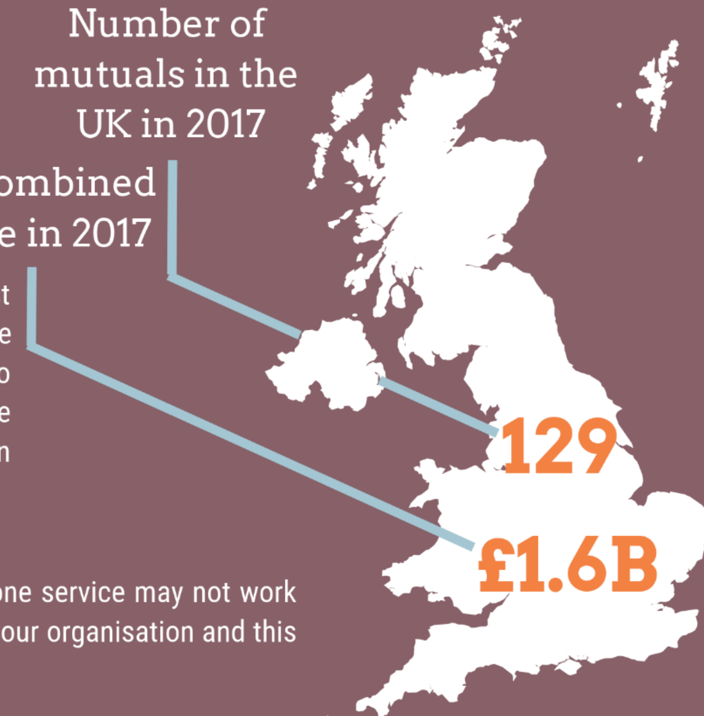
What do I need to get started?

Starter checklist

An assessment needs to be made to understand which delivery model is most suitable for your organisation. After a delivery model has been chosen we can assess which legal form is most appropriate.

However, first organisations need to understand their reasons to 'spin out' and the starter checklist (left) can be used to help think through why you want to 'spin out' before beginning the process officially.

Are mutuals the right answer for my organisation?



Public sector organisations are facing increasing levels of demand, whilst simultaneously wrestling with unprecedented cost pressures. This has led many public service leaders to start considering whether their current in-house delivery model is the right one to deliver their services. While public services may be able to redesign and improve their in-house service to meet immediate pressures, their current position may make them less able to sustain future funding reductions or react to changes in user expectations.

The decision to establish a mutual requires careful consideration. What may have worked for one service may not work for another. An assessment needs to be undertaken to identify the optimum delivery model for your organisation and this may mean another model is identified as being more suitable for your service.

The 'Establishing a mutual' process is outlined on slide 12 and is designed to help public service leaders and teams to identify the delivery model that best meets the needs of the service, staff, communities and other stakeholders. Should the full investigation process be followed, the service will be well placed to implement its function and address the challenges it faces.

But establishing a new delivery model is not a universal remedy for all the problems your organisation may be faced with. The right delivery model will need to be accompanied by changes to things like the service's organisational culture and decision making processes; how it engages with stakeholders; how it procures services and manages the service's operating model; and how it delivers its various functions. Without a commitment to 'delivering differently', the service runs the risk of doing more of the same within its new delivery model.

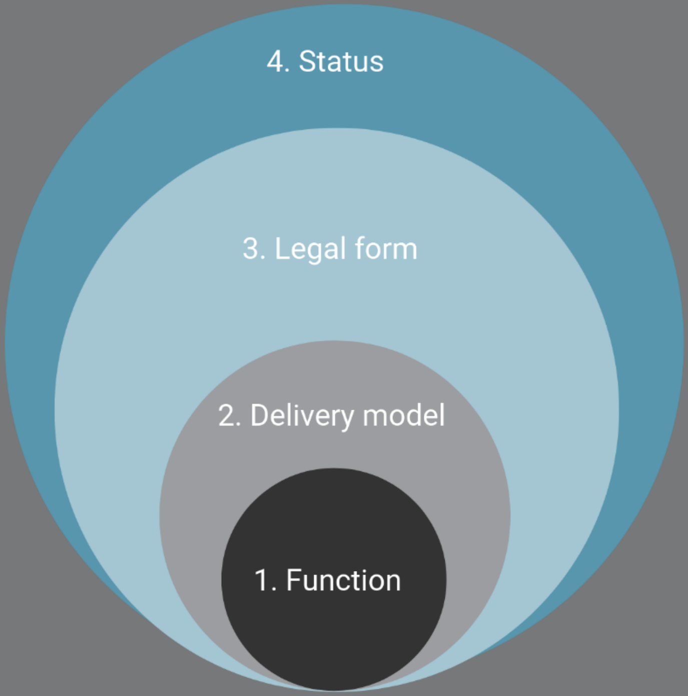
Function before form

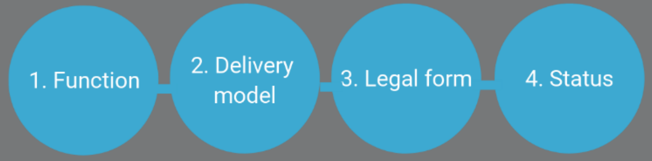
The investigation process should always start with defining your service's future function. This should be done before you start to consider the preferred delivery model and legal form for your service. Form follows **function**! The diagram on the right demonstrates the thought process you should undertake to arrive at your preferred legal form and status.

By developing the service's function (usually in consultation with the staff, service users, community and other relevant stakeholders), the service has the opportunity to demonstrate how it will deliver its strategy.

The risk of deciding on form before function is that you select a structure which doesn't allow you to deliver your strategic objectives effectively. This is because of the specific characteristics of each legal form. Each legal form offers certain opportunities and restrictions, in terms of commercial flexibility, stakeholder representation and the required use of assets (not an exhaustive list). By selecting a legal form before fully defining the service's function, you may be storing up problems for the future. Therefore, we strongly recommend that you always consider function before legal form.

There will almost always be a legal form to deliver the desired function/delivery model.





The different delivery models

Most public sector organisations no longer rely solely on in-house operations to deliver either public services or their own internal functions (such as HR, finance, payroll and IT). Many have used their legal powers to establish a mixed portfolio of provision, involving delivery models that operate across areas including adult social care, children's services, youth services, building control, and adult education.

There are a broad range of delivery models available to public sector orgnaisations. These include:

1. Wholly Owned Company (WOC).
2. Public Service Mutual (commonly referred to as mutuals).
3. Joint venture (JV - potentially involving ownership and control by a range of stakeholders including (but not limited to) staff, the parent organisation, or independent provider(s)).

Any full or partly externalised service can fall within one of the delivery model categories listed above or otherwise remain in house or be outsourced. These are not necessarily exclusive - PSMs can be WOC or JVs under some circumstances.

1. Wholly Owned Companies

WOCs are bodies that are free to operate as commercial companies but remain wholly owned and controlled by the parent bodies. As trading bodies, WOCs are in a position to provide their services to a wider market than to a specific department.

2. Mutuals

The Department for Digital, Culture, Media and Sport (DCMS) defines a PSM as an organisation:

- That has left the public sector (also known as 'spinning out').
- Which continues to deliver public services.
- Which has a significant degree of employee control, influence or ownership.

3. Joint venture

The term joint venture can describe a range of different commercial arrangements between two or more separate entities. Each party contributes resources to the venture and a new business is created in which the parties collaborate together and share the risks and benefits associated with the venture.

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Overview of selected delivery models

Delivery model	Ownership	Governance	Services
Parent Organisation Trading Company - sometimes referred to as a Wholly Owned Company	100% parent organisation(s).	Can be designed for flexibility/autonomy. Requires a parent organisation appointed board. Service Level Agreement (SLA)/contract with parent organisation(s) - control test.	Flexible - but majoity of services delivered on behalf of parent organisation(s) - function test.
Mutuals	Variety of options: parent organisation and staff, staff and community, 100% staff.	Can be designed as required. Board membership dependent upon ownership. SLA/contract with council(s). Well positioned to promote co-production.	Flexible - can deliver services to public sector, private or VCS customers.
Joint Venture	Potential for joint ownership, including staff, parent organisation(s) and/or third party provider.	Can be designed as required. SLA/contracts as required. Well positioned to promote co-production.	Flexible - can be delivered to parent bodies and private or VCS customers.

Advantages & Disadvantages of Models

Wholly Owned Company

Advantages

- If the Teckal exemption is used no procurement exercise is required. For the Teckal exemption to be available the contracting authority must (1) exercise the same control over the separate entity as it does its other department; and (2) at least 80% of the separate entity's revenue must come from the contracting authority.
- A clear commissioner/provider split exists, meaning that the parent company can incentivise the WOC to realise efficiencies and develop service offerings.
- The parent company retains a high degree of control over the organisation, which may be a more politically palatable option than, for example, the PSM or outsourcing delivery models.
- An WOC can transition into alternative forms of delivery (for example a mutual) in the future.
- That despite certain restrictions on the type and level of commercial activities, WOCs possess greater freedom than in-house services to develop and trade services.
- Depending on how the WOC has been set up, the parent company may be in a position to 'claw back' surpluses from the service.
- An WOC may be able to achieve social enterprise status.

Disadvantages

- The process of establishing an WOC can be complicated, resource intensive and time consuming.
- The process would be undertaken 'on top of the day job' by service staff, while it requires close working with a number of other departments (such as legal, finance, HR, property/premises etc.) and support from external experts.
- The ability of a Teckal WOC to access external funding is limited because it is owned by a public body.
- As it is owned and controlled by the council, there is the risk that the creation of a WOC results in 'more of the same' being delivered.
- Should a Teckal WOC wish to develop new service lines only 20% of income can be delivered to non-owners.
- The WOC may be required to transfer surpluses back to the parent bodies, limiting the WOC's ability to develop new services or expand the geography it delivers services within.
- Should the WOC be able to retain a proportion of the surpluses it has generated, these would be subject to corporation tax.
- Like any company, WOCs are required to pay VAT, but not on everything.

Advantages & Disadvantages of Models

Mutuals

Advantages

- Becoming a mutual can provide the service with the opportunity to establish an organisation with a single focus on current services.
- A new organisational culture can be established, leading to staff playing an increasing role in making decisions at an operational and governance level.
- Depending on the ownership and governance model assumed by the mutual, staff, (as well as other relevant stakeholders) will be in a strong position to influence the strategic direction of the organisation.
- Decision making processes may involve fewer layers of bureaucracy, resulting in more timely decisions being made which benefit staff and communities.
- As mutuals experience a high degree of commercial freedom, they are able to explore new areas of service growth and may be incentivised to generate income from new sources to offset reductions in the level of funding received from the parent company.
- By empowering employees and communities to design and improve their services, mutuals are well placed to encourage innovation, for example they could pilot new services (designed by staff and communities) on a small scale.
- As an independent entity, a mutual will be in a position to reinvest profits back into the organisation, fuelling innovation and a needs-led approach to service delivery.
- Depending on the chosen legal form and constitution, a mutual may qualify as a social enterprise or charity, meaning that it may be eligible for grant funding opportunities not available in a traditional public service setting.

Disadvantages

- The process of establishing a mutual can be complicated, resource intensive and time consuming. The process is often undertaken 'on top of the day job' by service staff. It requires close working with a number of council departments (such as legal, finance, HR and property/premises) and support from external experts.
- There may be significant costs to change. It should also be accepted that changes to the way services are delivered may take time. The immediate challenges for mutuals once established usually involve ensuring business continuity and stabilising the service after significant reductions in funding.
- While mutuals may realise significant efficiencies, the decision to establish a mutual should not be primarily motivated by making efficiencies. Parent companies investigating the mutual model from a cost cutting perspective risk 'setting the organisation up to fail'. Equal (if not more) attention needs to be paid to ensuring the sustainability of the service through delivering differently, modernising the service offer and diversifying income streams across the service.
- Initially at least, most mutuals are reliant on their core contract held with the parent company. Over-reliance on this is a significant business risk. The challenge for mutuals is to diversify their income streams and reduce their dependence on the core contract.
- The staff group transferring to the mutual often does not possess all of the skills and capabilities needed to operate a commercially disciplined business. While training and development can help, mutuals may need to employ new staff to make sure the organisation has the necessary skills, experience and expertise to be sustainable.
- Like any independent company, mutuals are required to pay VAT and corporation tax.

Advantages & Disadvantages of Models

Joint Venture

Advantages

Due to the large number of joint venture options available, it is difficult to be specific with regards to the potential advantages and disadvantages that may be realised. The HM Treasury guidance note page 18, provides an overview of the advantages and disadvantages associated with each legal form for a joint venture.

Disadvantages

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Establishing a mutual: The Process

Pre-options appraisal

Before undertaking an options appraisal the service must be clear on its function, why it needs to change from its current state and why externalise from its parent organisation and become independent. (1. Function).

Options appraisal

During this stage an assessment of the service against several delivery models should be performed with respect to the desirability, viability and feasibility of the various options so an optimum model can be identified. (2. Delivery model).

Options appraisal process in detail

Business case

In this stage it is important to detail the case for change for the service to become the identified optimum model. The business case is written from the parent organisation's perspective and will justify externalising the service. (2. Delivery model).

Business Case template

Business plan

The new organisation needs to ensure it has a robust business plan in place so that it can stand up and be successful when it is established.

Business Plan template

Transition

Transitioning out of the public sector takes time and resource. An effective implementation plan can ensure minimal disruption occurs to on-going services.

Transition plan template

Go live

1. Function
2. Delivery model
3. Legal form
4. Status

Legal form

The term 'legal form' refers to the way a particular delivery model is structured, in terms of what type of company it is. Examples of legal form include a Company Limited by Guarantee or Shares, a Community Interest Company or a Community Benefit Society (previously referred to as an Industrial and Provident Society).

Assuming that (via the options appraisal) you have identified a mutual or joint venture as your preferred delivery model, you will be required to identify a legal form for the new entity.

As outlined already, it is essential that you first consider the function of your service. Once this has been determined, a decision needs to be taken in terms of the appropriate delivery model for the service. Once these have been confirmed, the identification of the preferred legal form for the service should be relatively simple to identify.

Qualified legal advice will need to be sought before confirming the legal form and registering or incorporating the new entity.

1. Function

2. Delivery model

3. Legal form

4. Status

Common legal forms

Company limited by shares

A company limited by shares is an independent incorporated entity, registered at Companies House and formed according to the Companies Act 2006, usually for profit-making purposes. It is the most commonly used company structure.

Company limited by guarantee

A company limited by guarantee is a limited company that has members (and not shareholders) who rather than purchase shares have a membership in the company and provide a nominal guarantee in the event that the company is wound up.

Limited liability partnerships

An LLP is a corporate entity with a legal personality separate from that of its members that can be used where two or more parties want to come together to undertake a business with a view to profit

Registered societies

There are two types of registered societies; community benefit societies and co-operative societies and They are run for the benefit of their members and communities respectively.

Community Interest Companies

Community Interest Companies were created to support social enterprises. They provide a degree of commercial freedom while also provideing safeguards to ensure the community retains the benefit of any assets the company owns.

Charitable incorporated organisations

A CIO is designed for not for profit organisations. These organisations need only register with the charity commission, as they are not a company they do not need to register at Companies House.

Further information on legal form is available here:

Template legal documents to support with incorporation/registration can be found here:

Status

The status of the organisation will depend on its function and legal form. This is why status is usually considered last. The terms ‘social enterprise’ and ‘charity’ refer to the status of the delivery model. For example all organisations that assume a 'CIC' legal form are social enterprises, but not all social enterprises have to be 'CICs'.

A charity could be set up as charitable incorporated organisation (CIO), a charitable company or an unincorporated association or trust. A charity needs to hold charitable objects in order tor receive charitable status (from the Charity Commission).

Each status will promote or restrict the new entity's intended function and therefore needs to be linked closely to the purpose of the new organisation.

Social enterprises

Further details on the characteristics of social enterprises can be found here.

Social enterprises are defined as ‘businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners’.

Charities

Details on the types of charity structure can be found here.

A charity is defined by the Charities Act as an institution which:

- Is established for charitable purposes only.
- Is subject to the control of the High Court’s charity law jurisdiction.

Important considerations before starting the investigation process

1. Overview

Before beginning the process of identifying and implementing an optimum delivery model, discussions are required between all stakeholders. It is recommended that these discussions focus on the organisations intended function and need to externalise. Without agreement on these issues, the investigation process may be delayed.

2. Assessing the appetite for change

You need to assess at an early stage whether stakeholder groups are willing to support the proposal to investigate a range of delivery models, through open and honest discussions. Undertaking an options appraisal does not start an irreversible process and does not necessarily mean that a new delivery model will be established. Should a strong case for change emerge, the case for doing nothing will weaken.

3. Understanding that change costs

During discussions, it is important that everyone realises that, as with any type of transformational change, the investigation and (possible) establishment of a delivery model will require investment. The service needs to allocate dedicated resources to lead the process. Each stage along the investigation and establishment journey requires significant support from the council's transformation team and relevant support services (such as finance, HR, legal and premises).

4. Understanding the decision making process

Important decisions, such as authorising an options appraisal and the establishment of the preferred option (following the business planning stage), will probably require cabinet approval, while other decision making groups may also need to be consulted. The decision making process can take time, with decisions potentially required at each stage of the investigation/establishment process.

5. Expanding the scope of the investigation to other services

Potential may exist for other services to be included in the scope of the new service model. This may be particularly relevant where the parent organisation is undertaking a transformation programme which involves re-design of other services and if these services share common priorities/objectives, customer groups and resources with the service.

6. One or more delivery models?

Informed by the needs of the local population, the outcome of public consultations and an understanding of how each individual service operates, the service and the parent body may decide that separating the in-house service into two or more delivery models would best equip the service to deliver the service's strategy.

7. Potential for a joint approach involving multiple partners

Multiple partners and their respective services could choose to work together, especially if they are facing similar challenges. This could involve 2 similar services being transferred into a single delivery model, or establishing a regional partnership arrangement involving collaboration between two or more organisations. It is therefore important to decide whether to engage with other organisations.

8. On top of the day job

The investigation and establishment process is complex and challenging. It is important to understanding the scope and scale of the investigation and establishment task.

Next steps

Once the 'starter' check list has been covered, key stakeholders engaged then the next stage would be to begin the 'Pre-options appraisal' stage outlined in slide 12. This will include defining the service's future function, building a case for change and externalising from the parent organisation.

Along with the information and templates found within this slide deck, additional resources can be found below.

If you would like to speak to a member of the Mutuals Team at DCMS, email mutuals@culture.gov.uk

Resources

Other DCMS resources

There is an array of resources on the gov.uk website. These include the mutualisation tool kit (although this toolkit is aimed at libraries it can be used as a guide for many other public services). Additionally case studies can be found of public services which have 'spun out'.

Case studies with Mutual Ventures

Mutual Ventures have worked with over 140 public sector organisations and have supported many to 'spin out". Case studies can be found on their website along with other resources.