
Overview and Scrutiny

Youth Service Working Group

January 2015

Membership of the Public Health Working Group:

Councillor Liz Johnston-Franklin (Chair)

Councillor Alan Till (Vice Chair)

Councillor Paul Bell

Councillor David Britton

Councillor Brenda Dacres

Councillor Jim Mallory

Councillor Hilary Moore

Councillor Pauline Morrison

Councillor John Paschoud

Councillor Luke Sorba

Councillor Alan Hall (ex-officio)

Councillor Gareth Siddorn (ex-officio)

Contents

Chair's introduction	xx
1. Executive summary	xx
2. Recommendations	xx
3. Purpose and structure of review	xx
4. Context	xx
5. Findings	xx
6. Appendices	xx

DRAFT

Chair's Introduction

To be inserted.



Councillor Liz Johnston-Franklin
Chair of the Youth Service Working Group

DRAFT

Executive summary

To be inserted

DRAFT

Recommendations

The Committee would like to make the following recommendations:

To be inserted.

DRAFT

Purpose and structure of review

1. As part of the Council's 2015/16 Revenue Budget Savings, savings proposals relating to the Youth Service was put forward. The Revenue Budget Savings proposals were considered by the Overview and Scrutiny Committee on 29 September 2014 and each of the Select Committees in October and early November, before being submitted to Mayor and Cabinet on 12 November 2014. The Mayor authorised officers to carry out consultation on base savings of £1.4m in relation to the current youth service, including:
 - A reduction to youth worker capacity and removal of Council staff from two youth sites
 - A reduction to commissioned provision
 - A reduction to management and business support staff and further efficiency savings
 - A reshaping of youth re-engagement services by re-specifying the specialist 1:1 service and funding it from other sources
 - Re-specifying the Not in Education, Employment or Training (NEET) Programme in accordance with Raising the Participation Age (RPA) and alternatively funding the programme.
2. The Mayor was also asked to consider options for the future of the Youth Service to allow planning to proceed into future years. The options included, but were not limited to: (a) the potential creation of an Employee Led Mutual (ELM) for the Youth Service, and (b) reducing the service to a statutory service only model.
3. The Overview & Scrutiny Business Panel requested that a working group on the Youth Service proposals be established to allow the broadest participation in consideration of the implications of the proposals.
4. At its meeting on 26 November 2014, Council agreed to set up a time limited Youth Service Working Group to operate until the end of February 2015 to consider the proposals with terms of reference as set out below.

Terms of reference

5. Scrutiny of the Youth Service falls within the remit of the Children and Young People Select Committee. The establishment of the Working Group did not remove this function from that Select Committee. The purpose of the Working Group was to assist with deliberations of the savings proposals and ensure that detailed analysis of the Council wide implications of the proposals were taken into account.
6. The terms of reference agreed for the Youth Service Working Group were:
 - Without prejudice to the remit of the Children and Young People Select Committee, to explore any proposals for the future of the Council's Youth Service to be considered in the course of the Council's budget process for 2015/16.

- To make any comments it considers appropriate about those proposals to the Council's Public Accounts Committee (PAC) prior to any submissions PAC may decide to make to the Mayor in February 2015 in relation to budget proposals for 2015/16.
- The Working Group will consist of 10 members (11 if the councillor outside the majority party wishes to sit on the Group) and will cease to exist at the end of February 2015.

Scope

7. The Working Group had three formal meetings to consider the following:

First meeting: 9 December 2014

- (1) To receive a "scene-setting" report; agree the timetable for the Working Group; discuss the Youth Service savings proposal considered at Mayor and Cabinet on 12 November 2014; and discuss the related consultation process.
- (2) To question officers on the information received.

Second meeting: 17 December 2014

- (1) To receive a report providing more detailed information on:

The 2015/16 savings: The base savings of £1.4m including (a) information on the impact the reduction in commissioning funding will have on the organisations currently commissioned and the services they provide; (b) proposals for where young people will access youth provision as an alternative to Rockbourne and Ladywell including any proposed alternative provision from those sites; and (c) relevant attendance data for the youth service.

Options for the Youth Service for 2016-17 onwards: including information on:

- The advantages and disadvantages of ELMs.
- The different types of governance structures and funding agreements for ELMs and their particular advantages and disadvantages for all stakeholders including the Council and young people
- The potential savings and costs generated by an ELM to the Youth Service Controllable budget and other budgets
- The likely level of annual council funding for an ELM for the first three years
- The options for income generation under an ELM model and how such a model might become self-sustaining
- A timetable for, an outline of, the work that would be undertaken over the course of the next year to develop a plan for the potential mutualisation of the service, if this option was agreed.

- (2) To question officers on the written report.

- (3) To receive detailed financial and legal advice on the options available in relation to the potential employee mutualisation of the service, including Implications in relation to TUPE, pension and redundancy liabilities, the transfer of assets etc.

[The presentation from the Head of Law on some of the legal issues surrounding the options for the future of the Youth Service is attached at Appendix A].

Third meeting: 20 January 2015

- (1) To receive and comment on the draft Mayor and Cabinet report (scheduled for the Mayor and Cabinet meeting on 11 February 2015), providing a full options appraisal and a summary of the youth service consultation results.
- (2) To consider and agree a final report presenting all the evidence taken and to agree recommendations for submission to PAC on 5 February 2015 (and then to Mayor & Cabinet on 11 February 2015).

Background information

8. At its second meeting on 17 December 2014, the working group received the following background papers:
 - Various briefing papers on mutuals, including: [Developing a mutual for local authority service delivery](#) (Geldards law firm); [The next stage for public service spin outs](#) (Pioneers Post); and [Information from the Cabinet Office](#)
 - Lewisham Youth Service Needs Analysis
 - Commissioned Youth Provision 2014-15 – Area profiles (Youth Service)
 - Commissioned Youth Provision 2014-15 – Specification (Youth Service).
9. Prior to its final meeting on 20 January 2015 the following background paper was provided to give the working group an understanding of the picture across London:
 - [A review of London Boroughs' Youth Provision](#)

An update on youth service provision across London was also provided at this meeting.

The context

The National and local policy context

National policy context

10. Section 507B Education Act 1996 imposes a duty on local authorities, so far as is reasonably practicable to promote the well-being of persons aged 13-19 (and of persons aged up to 25 with learning difficulties) by securing access for them to sufficient educational and recreational leisure-time activities and facilities. A local authority can fulfil this duty by providing activities and facilities, assisting others to do so, or by making other arrangements to facilitate access, which can include the provision of transport, financial assistance or information.
11. Section 68 of the Education and Skills Act 2008 places a duty on local authorities to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training.
12. Positive for Youth was launched in December 2011 as a broad-ranging strategy detailing the Government's approach to youth provision. The strategy calls for 'a new partnership approach' in local areas – between businesses, charities, public services, the general public and young people – to provide more opportunities and better support to young people. The 2013/14 Youth service restructure was aligned to this strategy (see local policy context below).
13. Positive for Youth promotes early and positive support to reduce the chances of public funds being wasted in holding young people in expensive secure provision or managing the remedial effects of inadequate support and assistance as they reach young adulthood. The key strategic themes contained in Positive for Youth and Lewisham's Children and Young People's Plan are as follows:
 - Helping young people to succeed
 - Promoting youth voice
 - Early intervention
 - Supporting stronger local partnerships
 - Strengthening communities and the voluntary sector.

Local policy context

14. In 2013/2014, the Youth Service implemented a significant organisational restructure. The restructure released savings of £1.03m. These savings were achieved primarily by reducing staff headcount by 18.1 FTE, including a 72% reduction in management, removing youth work staff from two youth centres – Grove Park Youth Centre and Oakridge Youth Centre – and generally ensuring more efficient operations across the service.
15. The restructure created a leaner, more efficient service more capable of responding to young people's needs. It also introduced a significantly larger commissioning fund from which voluntary sector and other providers could bid to deliver youth

provision. In the first year post-restructure, the Service has been embedding performance management, income generation and contract management capabilities.

16. The Youth Service provides and facilitates access to a range of activities for young people through a combination of direct delivery, support to access delivery provided by other organisations, and commissioning and partnering with the private, voluntary and independent (PVI) sector. The activities are focused on developing young people's life skills, as agreed in the previous reorganisation of the service.
17. Provision includes positive activities for young people: offering them places to go and things to do, including social and cultural activities, sports and play, and early intervention services. The Youth Service also offers informal education, advice and guidance on career choices and healthier lifestyles, and information concerning the dangers of substance misuse.
18. The Service's specialist support for young people in relation to education, employment and training consists of 9 specialist one-to-one youth workers, each holding a maximum caseload of 15 cases at any one time, with an annual service reach of c.270 young people. Alongside a one-stop 'holistic support' shop, Baseline, in Lewisham town centre and a variety of commissioned providers, the Service provides one-to-one youth work and information, advice and guidance for the Borough's most vulnerable including support to young fathers, young women and those considering their sexuality. Additionally, there is a not in education, employment or training (NEET) Programme. As a part of the 2013/14 restructure this scheme changed to become a 12 week Government-recognised traineeship, in partnership with Bromley College. The programme runs 3 times a year in line with school terms.
19. All of these activities and support systems take place at 7 Council-run youth centres, 5 Council-run adventure playgrounds, via street based work, at Baseline and at a variety of non-council run venues across the Borough.

The Vision

20. The Working Group was informed that the 2013/14 restructure had established a vision for the Youth Service that was currently being embedded throughout the service.

The Youth Service maintains the following aims:

- To encourage the Council and other organisations to deliver a vibrant range of activities for all our young people to enjoy and benefit from, and to recognise that all activities for young people across Lewisham and London are an important part of our youth offer.
- To support young people in Lewisham in need of extra help, to achieve the skills they need to become happy, healthy and successful adults.

These aims bring about the following outcomes for young people:

- Improved life skills
- Increased involvement in education, employment or training
- Staying safe and well, and preventing needs from escalating.

21. The Working Group was informed that the Service's agreed aims and outcomes were not going to change and that the savings proposals put forward related to the model of delivery and how the vision could be achieved within the resources available, not changing the vision. It was suggested, however, that the reduced commissioning fund would require prioritisation to take place; and that this would be based on needs, but also on ensuring the right balance of provision in terms of activities, geography and timing; and taking into account other available provision.

DRAFT

Findings

A: The 2015-16 Base Savings Proposals

22. The current Youth Service budget is £3.46m and the Service employs approximately 85 people. The Working Group heard evidence that the 2015-16 base savings proposals would result in a saving of £1.4m and:
- A reduction in staffing (the deletion of two manager posts and one business officer post; and a reduction in frontline staff including the removal of youth service staff from 2 youth centres – the Ladywell Youth Village and Rockbourne Youth Centre) and a consequent reduction in street-based capacity (although the capability would be retained)
 - A reduction in the commissioning fund of approximately 31%
 - The generation of £100k income
 - The bringing together of the NEET Traineeship and Specialist 1:1 service to form a re-engagement service.
23. Members were told that the general scope of the Service would remain intact with staffing levels reduced to the minimum level believed necessary to operate an ELM (see next section) in the future. The reduction in staff would be equivalent to 10.5 full time equivalents. The redundancy payments that the Council would be liable for would not exceed £154k but the precise figure for this one off payment would not be known until after the proposals had been implemented.
24. The following points were made to the Working Group in relation to the base savings proposals:
- The Service would be required to generate income by renting space to private and community sector users and bidding for relevant, available grants. Based on current projections and the retention of at least 5 youth centres and 5 adventure playgrounds, it was feasible that the Service would generate £100k by the end of 2015/2016.
 - The recommendation as to which two centres would be offered to the voluntary sector or closed was based on factors including location; the potential for the private and voluntary sector to deliver provision from the sites; and the attractiveness of the remaining facilities to generate income.
 - As such, it was proposed to close or find alternative providers for youth provision at Ladywell Youth Village and Rockbourne Youth Centre as both centres already had alternative non-Youth Service provision running from them. (Rockbourne offered short break provision on two weekday evenings and Saturdays, and Ladywell offered short break provision on Saturdays. Rockbourne also hosted a scout group, whilst Ladywell operated as an adult day care centre the majority of the time).
 - Officers were actively engaging with private and voluntary sector organisations and agencies to see how the sessions vacated by the youth service at Ladywell and Rockbourne might be filled.
 - The savings proposals did not in any way relate to building costs. The possibility of reducing building costs via divestments was not being

examined as officers did not want to jeopardise non-youth service provision at these sites. In particular, the short break provision at Rockbourne was considered very valuable and the building was one of only a few able to provide such provision. In addition, the Ladywell Village building was a Community Services Directorate asset and not a Children and Young People Directorate building.

- Officers were looking at changing the opening hours of the Ladywell adventure playground so that this provision could potentially fill the gap caused by the removal of youth service sessions from Ladywell village; and were consulting young people on this option.
- Alternatives for the Rockbourne youth service sessions were also being investigated and one organisation had already expressed an interest in taking over the slots.
- The Youth Service's street-based outreach capacity was currently comprised of 3.4 FTE Support Youth Workers. Under the proposals this capacity would be removed in its entirety. Because of current support staff vacancies the outreach service was only operating a limited street-based outreach capacity at the moment and used to inform young people of what the service offers and spur their participation at youth sites. Some of the loss of street-based capacity could be mitigated by the communications work of the Participation and Engagement Officer.
- During the 2013/14 Youth Service restructure, commissioning funds were doubled. A reduction of 31% would still enable the Service to commission an amount greater than what was available in 2012/13.
- Initial appraisal of the impact of services provided through the commissioning fund suggested that 11 or 12 projects were showing some degree of non-performance. However, making required savings by simply not commissioning these services next year would not be possible as a good mix of provision (by type and location) needed to be provided.

The new re-engagement service

25. The Working Group was informed that it was proposed to bring together, more strategically, three elements of the current service to form a youth re-engagement service:
 - Specialist 1:1 Service
 - The NEET Programme
 - NEET tracking services
26. **The Specialist 1:1 Service** is an outreach service operated out of Baseline in Lewisham Town Centre. The service works with young people and offers individual support to empower them to become resilient and support themselves through issues and to help them achieve positive life outcomes. The service also supports emergency situations, signposting to others and delivers holistic information, advice and guidance. Currently, the service supports approximately 250 young people a year. The Working Group was informed that the proposal was to remove the Specialist Support Manager post, then consider the best means to continue delivery, probably re-commissioning the service with Targeted Family Support and funding it via the Troubled Families grant.

27. **The NEET Programme** currently operates out of The New Generation (TNG) and is a 12 week programme that runs 3 times a year with 16 young people on each programme. The Working Group was informed that the Specialist Group Work Coordinator post would be removed and programming costs further reduced. The reduced service would then be re-specified in accordance with Raising the Participation Age requirements and funded via alternative monies from schools, colleges and the Education Funding Agency.
28. The Council has a statutory responsibility to **monitor and track NEETs** and to support vulnerable NEETs. The Working Group was informed that this element of the Youth Service would remain intact, with only minor reductions to the communications budget.
29. The total cost of the re-engagement service would be £705k:
- £390k for specialist 1:1 support services
 - £115k for NEET Programme
 - £200k for tracking young people who are NEET.

Consultation

30. The Working Group was informed that consultation with young people on the savings proposals (both the base savings and the future savings – see next section) involved (a) providing a summary of the proposals; (b) having ‘family meal’ type events at youth clubs to explain the proposals; (c) consulting the young mayor and his advisers; and (d) using youth workers to explain the proposals to young people in detail and record feedback.

Recommendation X:

B: The savings proposals for 2016/17 onwards

31. Officers informed the Working Group that it was important strategically to set out an end option for the Youth Service as further Council funding reductions were required in subsequent years. Annual reductions to the Service would have a detrimental effect on young people, and the frontline staff who served them, making it difficult to involve young people in the face of diminishing provision and motivate and retain talented staff in the face of continuing requirements for redundancies. There were a number of options that could forestall these and other negative implications, although the Mayor had indicated that he did not wish to consult on the first:

1	<p>Reducing the service to providing the statutory minimum</p> <ul style="list-style-type: none"> • The Council would continue to fulfil its statutory obligation and make significant savings that would contribute to the broader £85m figure. • Youth Service staff and young people would not be subjected to destabilising year-on-year cuts to the Service. • All Council-run youth provision would end, and the Service would no longer commission the voluntary sector to run youth provision.
2	<p>Putting a Youth Service contract out to tender and commissioning from the private or voluntary sector</p> <ul style="list-style-type: none"> • A reduced version of the current capabilities and outcomes delivered by the Youth Service would remain in the Borough for at least the duration of a commissioned contract. • Market testing had suggested that providers were not interested in such a large scale contract – interest is confined to partnering with a future mutual or charity, not in bidding for a whole service contract. • Full cost recovery might reduce the savings generated.
3	<p>Dividing the youth centres and adventure playgrounds, incorporating each individually as a charity and trust, mutual and/or social enterprise and commissioning these separately</p> <ul style="list-style-type: none"> • Each independent youth site could avail itself of alternative funding (e.g. philanthropy, grants, corporate giving) to supplement council funding. • All economies of scale would be lost, and the sustainability prospects of individual sites could be put at risk. • Service delivery would potentially be piecemeal and disjointed.
4	<p>Retaining a full council-run service</p> <ul style="list-style-type: none"> • This wouldn't deliver any savings for 2015/16, necessitating savings in future years - this would reduce Council-run and commissioned youth provision. • This option would prevent the additional fundraising open only to

	non-council entities.
5	<p>Spinning out the Youth Service, establishing a young person and employee-led mutual (ELM), and legally incorporating the enterprise</p> <ul style="list-style-type: none"> • This would sustain the youth service with fewer resources but posed a number of risks (see below).

32. An officer appraisal of the options outlined above favoured the mutual option, although the Working Group was informed that the results of the consultation on the proposals could change the appraisal. It was also noted that, whilst the mutual was currently the preferred option, a full options appraisal would be presented to Mayor and Cabinet on 11 February 2015.
33. At its meeting on 17 December 2014, the Working Group received a presentation from officers from the Children and Young People Directorate which outlined the vision for the mutual. Members were informed that, as an ELM, the organisation would continue to uphold the Council's vision for youth provision, but would aim to go further – to create an organisational model that could deliver the Council's vision more effectively and at better value. It was argued that staff would be naturally empowered to own outcomes and deliver best value because they would have a tangible stake in a real social business. The ELM would be an organisation where:
- *Young people have a greater voice in designing the services they use.*
 - *An entrepreneurial ethos underpins the organisation, with a culture where staff know what is expected of them and have the freedom to find the best ways to achieve success.*
 - *The service-user is at the heart of the organisation and the organisation relies on the ingenuity of young people and staff.*
 - *The “arc of mediocrity” is broken by giving staff the freedom to hone their strengths.*
 - *Financial surpluses are sought and reinvested in the business to further the mission.*
34. The Working Group was informed that officers felt that the benefits of mutualising the Youth Service included:
- A greater opportunity for the involvement of young people by allowing them to become part owners of the ELM and have an elected place on its board.
 - Greater flexibility to strategise, innovate and better meet the needs of end users and stakeholders.
 - As an ELM, staff could access grant funding streams, sponsorships and income generation opportunities currently unavailable to local authorities (such as Children In Need funding).
 - Maintaining a good level of youth provision in the Borough with reduced or potentially no funding from the Council.

- Influencing positively organisational behaviour, particularly with regard to creating a shared sentiment of staff ownership, minimising sick days and increasing influence over future decisions.
- Allowing staff to play to their strengths.
- Potential 'back office' savings such as ICT.
- Retaining a relationship with a staff group that maintains already-established relationships with young people and community members in the Borough.
- Reducing long-term liabilities to the Council.

Planning for a mutual

35. The Working Group was told that if the ELM option was agreed the Youth Service would immediately enter into the planning and scoping stages of creating an ELM. This would include financial and consultative support from the Cabinet Office Mutuals Support Programme. It was noted that some preparatory work on the ELM proposal had already been carried out (staff had attended Cabinet Office workshops and discussions with staff around the proposal had been held) but there remained a lot of business planning activity to take place if this proposal were to be taken forward. Some staff were cautiously excited about the prospect of a youth and employee led mutual, could see the potential it offered for carrying out work that was not possible at present, but were aware of the risks.
36. The Working Group heard that the Council would need to be clear in the funding agreement setting up the ELM what its core requirements were whilst it continued to provide funds (it was anticipated that funds would need to be provided for three years). However, officers argued that it would be important to secure for the ELM as much freedom as possible during and after the planning stages. Whilst the Council would need to be clear on its expectations over the three years it funded a mutual, the head of the mutual would need to be given the entrepreneurial freedom required to make it self-financing after those three years. At the meeting of the Working Group held on 17 December 2014, the Cabinet Member for Children and Young People commented that a key decision for the Council was whether or not it wanted a self-funding option. If it did, the requirements it could impose would be limited.
37. The Working Group was informed that any remaining staff at the point of transfer to an ELM would be transferred in accordance with TUPE to the ELM. Consideration would need to be given as to how liabilities for the Local Government Pension Scheme could be met. It is unlikely that the ELM would be able to meet these liabilities at the outset. In the two ELMs currently operating (see below), the relevant local authorities had kept the liabilities for transferred staff.
38. The Working Group heard that there were currently two youth service ELMs in operation in England – Epic CIC (formerly Kensington & Chelsea's Youth Service) and Knowsley Youth Mutual (formerly Knowsley's Youth Service). Should Lewisham's Youth Service mutualise, there would be lessons to learn from both organisations at they had gone through the process and were now

operating as independent entities. There would also be learning from other areas of the Council that had followed similar strategies, including Wide Horizons, Education Business Partnerships, Libraries and housing.

39. However, Members were also informed that the two ELMs in operation were still fairly new and it was unclear as to whether they would be able to become completely self-supporting organisations with no funding from “their” Council. Whilst it would be the intention that Lewisham’s ELM would become self-supporting after 3 years, and that the Council could then realise full savings, there was a risk that it would not achieve that aim. In that case, a decision would need to be made as to whether the Council continued to support the ELM financially or not.

The legal context

40. The Head of Law gave a detailed presentation to the Working Group on the potential legal models for an ELM at its meeting held on 17 December 2014. This is attached at Appendix 1.

41. The following key points were made:

- The various mutual models could be differentiated from each other by considering (a) who controlled them; (b) what legal form they took; and (c) their status.
- The four key features of a mutual were a shared purpose, ownership by members, control by membership (one member, one vote) and stakeholder representation.
- Models for the delivery of mutual included:
 - Companies limited by shares – where members would own the company
 - Companies limited by guarantee - a common form for mutuals, members would not own the company
 - Community Interest Companies (CICs) – designed for social enterprises, organisation must meet the community interest test, seen as a ‘badge of commendation’
 - Industrial and Provident Societies (IPSS) – very flexible with light touch regulation, which could take the form of a co-operative society or a community benefit society (which might help attract grant funding)
 - Unincorporated Associations – very flexible but very little protection (members would have personal liability).
- All of these models could have charitable status but any asset transfers to charities were usually irreversible.
- Having limited liability status was important.
- Asset locks could be applied to CICs and community benefit societies.
- Unless the Council retained the service a contract would need to be entered into following contract law.
- EU law should not be an issue as draft regulations exempting mutuals were likely to be in force by the time Lewisham’s mutual was

established. The contract, under the Council's constitution, would be a Category A contract, but a single tender action might be possible.

- TUPE would apply to staff transferring to the mutual, staff would keep their terms and conditions and pensions would need to be fully funded at the point of transfer.

42. It was further noted that:

- A mutual would be managed in the same way as any other contract with monitoring, penalties for non-performance, default provisions and exit plans.
- A really clear specification might improve staff performance as everyone would know exactly what they needed to provide.
- Officers would advise against ring-fencing part of the mutual's budget for the voluntary and community sector (VCS) to allow the head of the mutual the entrepreneurial headroom to start an income generating business. That said, it was inconceivable that the mutual would not work solidly with the VCS and commission some provision through them, including specialist provision.

43. The following points were made by members of the Working Group in relation to the ELM option:

- There were lots of risks inherent in forming a mutual but officers were only tending to describe this option in positive terms.
- If the mutual option was to be explored further, a "pull-back" option should also be investigated.
- The impact on the 35 organisations currently commissioned to provide 37 youth projects needed to be considered.

Recommendation X:

Comments on the draft Mayor and Cabinet report

44. At its meeting held on 17 December 2014, the Working Group discussed the tight timetable for commenting on the savings proposals before the Public Accounts Select Committee on 5 February. It was agreed that the draft Mayor and Cabinet report (scheduled for the Mayor and Cabinet meeting on 11 February 2015), providing a full options appraisal and a summary of the consultation results, would be provided to working group at its third meeting on 20 January 2015.
45. The Working Group made the following specific comments on the report:

Comments made on 20 January 2015 to be inserted

Recommendation X:

DRAFT

Appendices

Appendix A: Presentation by the Head of Law

DRAFT

Slide 1

Models for mutuals
Kath Nicholson

Slide 2

Confusion about types of employee led organisations

- Who controls?
- Legal form?
- Status?

Slide 3

Mutuals – key features

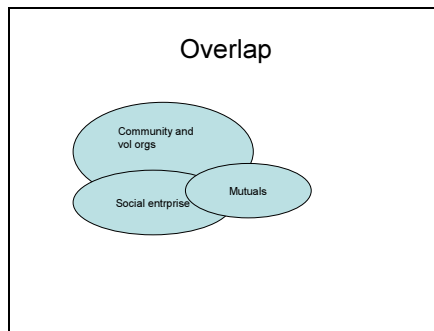
- Shared purpose - for either closed community or more altruistic
- Ownership – by members. Held in common. No-one entitled to share of assets
- Control – One member one vote. No majority shareholder
- Stakeholder representation –e.g. staff, users, external participants

Slide 4

Social enterprise

- A type of venture, not a legal form for delivery vehicle
- Business/service
- Primarily social objectives
- Surpluses ploughed back in
- For community good not profit distribution

Slide 5



Slide 6

Models for delivery of mutual

- Company ltd by shares/guarantee
- Community interest company
- IPS – Co-operative models
- Unincorporated associations
- May have charitable status

Slide 7

Choosing the right legal model

- Legal entity needed to hold manage and protect assets, enter contracts, leases etc
- Protection from individual liability for participants
- What degree of flexibility is needed in organisational structure?
- Credibility with well defined purpose and structure

Slide 8

Limited companies

- Corporate body, limited liability, can own assets, contract, borrow money etc in own right
- Types
 - Cos ltd by guarantee
 - Cos ltd by shares
- Regulated by Cos House

Slide 9

Companies limited by guarantee

- Liability limited on dissolution to value of guarantee usually nominal up to £10
- Good for most non profit making activities
- Often charities
- No share capital

Slide 10

Companies ltd by guarantee

- Protect members from personal liability
- Can make profit but must plough back...
- Company law regulatory framework
- Transparency – annual accounts, directors' report etc
- Common for mutuals so long as mutual principles in Articles of Association

Slide 11

Shares/guarantee?

Guarantors make company decisions but do not own it.

- Generally, companies limited by shares are owned by shareholders who receive dividends based on any profit. Liability limited to value of shareholding

Slide 12

Community interest companies

- CICs – 2005 – custom made for social enterprise
- Ltd by shares or guarantee
- If ltd by shares – dividend cap
- Bound to use resources, income, profits for good of community served
- “Community Interest Test” – would a reasonable person perceive its activities as in the interests of community
- Community must be sufficiently broad and the company not politically motivated

Slide 13

CICs

- “A badge of commendation”
- More regulation – Cos House and CIC Regulator
- Suitable for mutuals

Slide 14

CICs

- Established like any other company but with Community Interest Statement and must pass Community Interest Test on formation and throughout
- Asset lock – assets (and profits/income) can only be used for good of community so....

Slide 15

Asset lock

- Asset must stay in CIC, or
- Be used for community purposes for which CIC formed, or
- Transfer only if one of the following requirements is satisfied
 - Full consideration
 - To another asset locked body (e.g. CIC, charity) specified in Articles
 - To another asset locked body with consent of Regulator
 - Otherwise for the benefit of community

Slide 16

Industrial and Provident Societies

- IPS origins in co-op movement
- HAs
- Separate legal identity
- Ltd liability for participants
- 2 types
- Co-operative Society and Community Benefit Society

Slide 17

IPS

- Flexibility
- Members actively control org and agree its policies and make its decisions by OMOV.
- Shares - nominal value (£1)
- Members agree rules in constitution registered with FSA
- Duties and powers of board/members highly flexible and matter for IPS rules, so can be tailored
- Light touch regulation

Slide 18

Co-operative Society

- Formed for the benefit of its members rather than society at large
- Can distribute profits to members
- No asset lock
- May not be suitable for PSM.
- Could restrict membership to employees

Slide 19

Com Ben Society

- Pursues wider public good rather than members' interests
- Can't distribute profits to members
- Can't distribute assets to members on dissolution
- May qualify for "exempt" charitable status if meets criteria for charitable status
- Same tax benefits as charity without same regulatory scrutiny
- Can apply asset lock
- Can raise funds by issuing shares without FCA sponsor
- Insolvency procedures aimed at rescue available now

Slide 20

LLP

- LLP – Limited liability partnership – halfway house between incorporation and simple partnership.
- Corporate identity and ltd liability
- Advantages of Co with freedom to agree workings.
- Taxed as partnership
- Must be established to make profit
- Not usual for mutual but possible

Slide 21

Unincorporated association

- Most flexibility, least protection
- Simple, easy to set up
- No regulators
- Personal liability, no corporate status
- Not suitable where employees engaged or assets held or contracts entered into

Slide 22

Charitable status

- Must be established for public benefit;

and

- All purposes must be charitable

Slide 23

Charitable status

- Can be complex to set up
- Exempt from income and corporation tax, but not VAT
- Can hive off revenue making activities to non-charitable subsidiary
- Constraints on use of charitable funds and assets make earlier transfers virtually irreversible
- Effect on funding

Slide 24

Charitable purposes

- Relief of poverty
- Advancement of education, religion, health or saving of lives, citizenship or community development, arts, culture, heritage or science, amateur sport, human rights, conflict resolution or promotion of religious or racial harmony or equality/diversity

Slide 25

Charitable purpose

- Environmental protection or improvement
- Relief of those in need because of youth, ill health, age, disability, financial hardship or other disadvantage
- Advancement of animal welfare
- Promote efficiency of armed forces, police, fire, ambulance
- Other similar purposes

Slide 26

So what now?

- How to provide best possible YS with decreasing funds
- What sort of service do we want
- What are the delivery options, once that is agreed

Slide 27

Options

- 1) Do statutory minimum and none else
- 2) Do more than minimum - do all in house
- 3) Do some in house and some under 1 large contract
- 4) Do some in house and commission several contracts
- 5) Externalise all in one contract
- 6) Externalise all in several contracts
- 7) If 5 or 6, how to identify contractor

Slide 28

Some considerations

Best value duty – to ensure continuing improvement and economy, efficiency and effectiveness – can take into account social value considerations

Procurement process is usual method to demonstrate best value

Contract worth £1.6 million – procurement rules

Slide 29

EU law

- EU current position
- Part B – only requirements are non discriminatory terms and award notice
- EU directive changing soon to require everything to go out to tender in EU but.....
- Draft Directive carves out mutuals from requirement to advertise in Europe – not in force yet
- Draft Regulations to translate into domestic law for contracts < 3 years (Art/Reg 77) - not in force yet. Expected 2015
- EU requirements unlikely to present difficulty

Slide 30

Procurement

- Council's procedure rules
- Category A contract, over £500,000
- Public advert and competitive tender unless exemption applies
- Exemption applies only in exceptional or unforeseen circumstances approved by ED R&R, if

Slide 31

Procurement

- Nature of the market has been investigated and the departure is reasonable; or
- Extreme urgency; or
- Circs are otherwise genuinely exceptional
- And departure allowable in law.

Slide 32

The Question

- “Do these circumstances apply to justify the Council pursuing an exclusive deal without being satisfied on the basis of a normal tender process and evaluation?”
- If so, Council will need to be satisfied it has best value from any contractual arrangement

Slide 33

Powers

Section 1 Localism Act would allow local authority to establish mutual, provided properly applied

- specific outcomes to promote economic environmental and social wellbeing are identified
- not highly speculative
- not just about saving money.

Slide 34

Contract letting rules still apply

- Even to local authority established mutual
- Level playing field if tendered
- Separation of client and potential contractor role in letting contract to avoid conflict

Slide 35

TUPE

- Employees wholly or mainly engaged in transferring entity transfer to new contractor
- Terms and conditions intact
- Same or broadly similar pensions
- Heavy burden on contractor reflected in contract price
- Additional Council cost to fully fund pension liability at point of transfer

Slide 36

Assets

- Council assets may be made available to contractor usually on lease or licence tied to duration of contract
- If in competition, at market rent reflected in contract price

Slide 37

Some mutual issues

- National political commitment
- Assistance from Cab office etc re establishment
- May be highly motivated provider
- Experience of staff can be taken into account on award of contract
- Year on year reduction in price

Slide 38

Some mutual issues

- Clear specification for any contract
- Satisfied as to ability of a newly founded mutual without track record outside the public sector
- Do mutual managers have commercial acumen?
- Sufficient financial backing from start?
- Long term viability of mutual? May look to Council if in financial trouble
- Exit strategy at end or if fails?

Slide 39

Conclusion

- Establishment of a mutual by the Council is a legal possibility.
- The issue is, in letting a contract for YS, what is the best way to do that to achieve the best possible outcome for the youth of Lewisham?

DRAFT