

MAYOR AND CABINET			
Report Title	Mayor's Response to the Public Accounts Select Committee's Short Review into Mutualism		
Key Decision	No		Item No. 11
Ward			
Contributors	Executive Director for Regeneration Head of Strategy		
Class	Open	Date: 13 July 2011	

1. Purpose

- 1.1 This report responds to the Public Accounts Select Committee's Short Review into Mutualism.

2. Recommendation

- 2.1 It is recommended that the Mayor agrees that:
- a) The Council sets an appropriate framework for assessing employee led mutual ventures.
 - b) The Council provides information about mutualism for local citizens and other stakeholders and that this be done by providing links to appropriate organisations and sources of information.
 - c) The Head of Asset Strategy and Development will consider proposals put forward to him by organisations with a viable business case to run a business start up. This will include assessing whether there are any suitable properties available within the Council's commercial or surplus property portfolio which may be helpful in taking forward their proposal.

3. Policy Context

- 3.1 Shaping the Future, the Council's Sustainable Community Strategy includes the following priority outcomes which relate to the support and promotion of new delivery models such as mutualism:
- Empowered and Responsible – where people can be actively involved in their local area and contribute to supportive communities.

- Dynamic and Prosperous – where people are part of vibrant localities and town centres, well connected to London and beyond.
- 3.2 The promotion of mutualism also contributes to the following Council priorities:
- Community leadership and empowerment – developing opportunities for the active participation and engagement of people in the life of the community.
 - Strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport.
 - Inspiring efficiency, effectiveness and equity – Ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.
- 3.3 The Council has stated that decisions taken in relation to the Council's budget strategy will be underpinned by nine guiding principles, including encouraging self-reliance, mutualism and cooperation¹.
- 3.4 The Chief Executive hosted a New Directions Event in November 2010 in which he described the changing environment and challenges the Council would face over the coming years, including the impact of the comprehensive spending review and different models for delivering Lewisham services. A workshop that followed explored the concept and practicalities of employee buy-outs, social enterprise, community interest companies and cooperatives. The workshop was attended by a number of staff and at the end it was clear that an appetite existed for further information about new delivery models.
- 3.5 The Public Accounts Select Committee carried out a Short Review into Mutualism and published their findings in March 2011. The report detailed a number of recommendations with the intention of establishing a framework for the Council to meet the needs of employees and citizens in this developing area.
- 3.6 The Council has recently put on an event for staff focusing on mutualisation of council services. The New Directions: Mutuals and Co-operative Spin Outs event held on 16th June was attended by 45 council employees. The event was an interactive workshop where participants explored mutuals in more depth. The majority of the session involved participants working through theoretical ideas in small groups so as to encourage them to think practically about what would be required to set up a mutual. Experts were available to advise on the financing and launching of new enterprises. The event

¹ http://www.lewisham.gov.uk/NR/rdonlyres/70C7CD29-FC3A-40BE-BC17-AB11AA8BAF74/0/LBL_guidingprinciples.pdf

enabled attending staff to judge whether mutualisation might be a suitable course for themselves and provided them with the chance to hear what support the Council would be able to offer employees.

National Context

3.7 In May 2010 the new Government released “Building the Big Society”², which included proposals to:

- I. Support the creation and expansion of mutuals, co-operatives, charities and social enterprises.
- II. Support the above to have much greater involvement in running public services.
- III. Give public sector workers a new right to form employee-owned cooperatives and take over the services they deliver.

3.8 In August 2010, the government launched a Pathfinders scheme to support twelve pilot ‘spin out schemes’ where public sector staff took on the running of specific services. The aim was to allow the Government to assess what type of support and structures would best enable the development of employee-led mutuals, which could provide better services for less money on an ongoing basis.

3.9 Following on from this, the Government announced in November 2010, prior to the publication of the Localism Bill, that it would roll out new ‘Rights to Provide’ across public services, with employers being expected to accept suitable proposals from front line staff who want to take over and run their services as mutual organisations. Support for public service ‘spin-outs’, building on the Government’s Pathfinder programme includes:

- Over £10million to help the best fledgling mutuals reach investment readiness.
- A new information line and web service for interested staff, provided by Local Partnerships, the Employee Ownership Association and Co-ops UK.
- A ‘challenge group’ involving employee-ownership experts to investigate ways to improve regulation.³

3.10 The Government has indicated that any mutual proposals will be expected to deliver savings to the taxpayer and maintain or improve the quality of services.

3.11 The Localism Bill was introduced to Parliament on 13 December 2010 containing a number of packages of measures around strengthening powers for communities, including the ‘Right to Provide’ – as mentioned above, the right of public sector workers to form mutuals and bid to take over the services they currently deliver; the ‘Right to

² See: <http://www.cabinetoffice.gov.uk/media/407789/building-big-society.pdf>

³ See: <http://www.cabinetoffice.gov.uk/news/big-society-plans-better-public-services>

Challenge’ – the right of communities to express an interest in taking over the running of a local service; and the ‘Right to Buy’ – the right of communities to organise a bid and raise money to buy a public asset threatened with closure. Linked to this, the Green Paper *Modernising Commissioning*,⁴ also published in December 2010, lays out plans for supporting the creation and expansion of mutuals, cooperatives, charities and social enterprises and enabling these groups to have much greater involvement in running public services through the creation of a level playing field for those wishing to bid for public service contracts. A Public Service Reform White Paper, building on this, is expected later in the year.

- 3.12 It was announced by the Government in November 2010 that, where public procurement processes allow and where savings are properly agreed, it will be possible for civil service staff forming a mutual to be awarded a contract to continue providing services without going through the full tender process.⁵
- 3.13 Mutualism is a key policy area for the new Government and national policy on mutualism is still being developed.

Local Context

- 3.14 In a local government context, mutualism could mean, for example, allowing Council employees to run a particular service (such as a children’s centre); allowing residents in a given ward or geographical area to run a local community facility (such as a community centre); or service users to run a particular local service (such as a library).
- 3.15 However, some public services might not be suitable for mutualisation. Unsuitable services might include (a) some priority service areas, where there might be statutory standards of delivery and where the consequences of failure would be significant (such as safeguarding); or (b) services where there is not a great deal of community or service user interest in taking control (e.g. refuse collection) or employee interest (e.g. services where start up costs are significant). The legal implications for the Council are considered at paragraph 6.

4. Background

Definition of a mutual

- 4.1 Mutual organisations are organisations owned and controlled by their members (typically employees or customers of the organisation in question). Mutuals raise funds from their members in order to provide their members with services; and any profits are normally reinvested for the benefit of members. The members of a mutual are normally members because they receive a particular service or product. (e.g. a mutual building society)

⁴ See: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/commissioning-green-paper.pdf>

⁵ See: <http://www.cabinetoffice.gov.uk/news/big-society-plans-better-public-services>

- 4.2 Mutual can be governed and legally constituted in a variety of different ways. The majority of mutuals exist as companies limited by guarantee.
- 4.3 Ownership of a mutual can be direct or indirect. Direct ownership means employees/service users/ the community purchase or are given shares. Indirect ownership means the relevant equity is placed in trust or other type of mutual society, which acts on behalf of the employees/service users/ the community.

Advantages and disadvantages of mutuals

- 4.4 The following bullet points are often cited as being among the benefits of mutuals:
- Mutuals which provide services currently provided by the public sector might allow public organisations to protect the delivery of key services in the context of significantly reduced funding. Funding can be focussed on priority areas, with the community and voluntary sector providing other services.
 - Mutuals might produce more tailored and effective services as service users/the community/employees might have a greater appreciation of need.
 - Employee-led mutuals might increase efficiency as front line staff might be better placed to see how things can be done better; and might be more motivated as the business will belong to them. They might also be cheaper as they will be free of (a) corporate recharges such as the cost of democracy, (b) corporate management overhead costs, (c) the cost of corporate insurance and so on.
 - The development of mutuals might empower the local community and help foster civic engagement and community volunteering.
- 4.5 The following bullet points are often cited as being among the drawbacks of mutuals:
- Employees, Service Users and the local community might not necessarily have the capacity, ability or the desire to run services and/or take on assets. Fostering an ethos of community engagement and involvement and empowering the local community to run services will take a great deal of time and effort. Communities will need to be prepared and ready to take on responsibility for resources and it will take time to foster co-operatives based on a strong sense of membership and belonging and a shared understanding of purpose.
 - A recent review by the Third Sector Research Centre suggests that, at present, there is little independent evidence

to suggest that public services provided by the community through voluntary sector organisations are better for users.⁶

- Mutuels delivering services formally delivered by the public sector might be viewed negatively as an attempt by the public sector to offload the responsibility for social provision from the state and on to other sections of society.
- It may be difficult to persuade public sector employees to form mutuels if they offer no extra guarantee of stability or job security. Mutuels are subject to the same market pressures as normal businesses and may fail. Whilst normal shareholders have the option of selling their shares if they sense the business is failing, employees do not have this option.
- Employee-led mutuels will not necessarily be cheaper than keeping the service in house, as all service providers need to bear the cost of overheads including HR, accounting, governance, audit, liability (and other) insurance, as well as relevant management and asset costs; and economies of scale might make it cheaper to provide these corporately.

4.6 When weighing up the pros and cons for establishing mutuels to deliver services currently provided by the Council, practical considerations need to be taken into account such as conflicts of interest, TUPE⁷, redundancy terms and so on. Central to any consideration about the viability of establishing mutuels to provide services currently provided by the public sector, is the risk to service users of service failure.

4.7 When weighing up the pros and cons for establishing mutuels in any sector it is important to ensure that, if mutualism is to succeed, the ownership structure is tailored for the long term, the financial structure is tailored to support the businesses during the buyout process, and the leaders of the mutual understand the potential of co-ownership and are committed to making it work.

5. Recommendations from PAC and the Mayor's response

5.1 Set out below are the recommendations from Public Accounts Select Committee and the Mayor's response

⁶ See: <http://www.tsrc.ac.uk/LinkClick.aspx?fileticket=klUJDyaqxTs%3d&tabid=712>

⁷ Transfer of Undertakings (Protection of Employment) 2006 - a piece of legislation that protects employees' terms and conditions of employment when a business is transferred from one owner to another

Recommendation 1

The Council should develop a framework for assessing proposals to ensure that they will:

- **be sustainable (e.g. they have appropriate revenue streams, are an appropriate size, staff have appropriate skills and abilities etc.)**
- **provide services which meet defined quality standards**
- **provide acceptable employee conditions (e.g. pay the London living wage)**
- **protect any relevant assets**
- **adhere to agreed principles (e.g. Sustainable Community Strategy principles)**
- **be publically accountable (expected to positively engage with the Council's scrutiny process).**

Timeframe: The Committee expects the framework to be developed within six months.

- 5.2 The Council is currently developing a framework for assessing mutual proposals, entitled The Seven Steps to Enterprise. The steps which the Council will follow are set out below.

Step 1: Employee / group of employees identifies possible service area for mutualisation.

Step 2: Employee develop ideas and drafts an outline business case for the service area.

Step 3: Employee makes Executive Director for Regeneration aware that they have a proposal which they wish to pursue further.

Step 4: Informal discussion takes place between employee and the Executive Director. Executive Director will ensure that the applicant is aware that the proposal will need to be sustainable, will need to comply with Council quality standards and will need to comply with the Councils legal and procedural rules.

Step 5: Employee carries out any additional research or revisions to their application.

Step 6: Employee formally submits their proposal to the Council's Business Case Assessment Panel which is chaired by the Executive Director. All applications are assessed against a standard set of criteria. The exact assessment criteria will be produced in the next six months, but as recommended by the Overview and Scrutiny Committee it will ensure that proposals are sustainable, provide a service which meets defined quality standards, provide acceptable employee conditions, protect any relevant assets, adhere to agreed Council principles and are publically accountable.

Step 7: Employee meets with the Executive Director to discuss the decision made by the Business Case Assessment Panel. Additional support and assistance will be offered to employees who submit a

feasible proposal and this may take the form of external financial, legal or business advice. Further support may be considered in relation to time/leave to further develop the proposal or additional internal support.

Recommendation 2

The Council should conduct an audit of each service (or service group) provided by the Council to assess whether it is suitable for mutualisation. The Council should also consider services currently provided external to the Council, which could be provided through this model, with the support of the Council. The audit should include information on:

- **the implications of the service ending for service users**
- **the assets required by the service (including start up capital, working capital and whether an asset lock would be required) and any attached liabilities**
- **the relevant revenue streams and their size and security**
- **the level of existing staff expertise and entrepreneurialism and whether any mutual ‘champions’ can be identified**
- **whether there is relevant community interest and expertise and any relevant mutual ‘champions’ within the VCS sector**
- **what the start up and transfer costs would be if the service was mutualised**
- **what the TUPE and procurement (e.g. OJEU) implications would be**
- **whether any expressions of interest in running the service have been received.**

Timeframe: The Committee expects the audit to be completed within six months.

- 5.3 It is important that the Council has an open mind in relation to the possibilities for delivering services. Clearly where there is enthusiasm for a model of service delivery such as mutualism and if that model can deliver better services or outcomes more efficiently then the Council should pursue that opportunity. However an audit of each service or service group would be a time consuming and costly method of identifying suitable service areas.
- 5.4 Successful mutualisation of services requires energised, enthusiastic and capable staff to identify services that may be suitable for mutualisation themselves. It is important that the employee or group of employees demonstrate entrepreneurial and business management skills and that they have given due consideration to the range of risks that exist in such a venture.

- 5.5 The encouragement and support that will be offered to staff (as contained in this report) will enable employees to identify suitable areas themselves. This is an effective and efficient way of identifying services or service groups which may be suitable for mutualisation and one that will ensure that it is interested and engaged staff who are driving this process.
- 5.6 The other aspects related to this recommendation are all subject to the identification of a service or group of services that may be considered and they would follow as part of the process for assessment.

Recommendation 3

The Council should ensure that the support offered to voluntary and community sector organisations and employees considering spin outs, reflects the changed public service delivery climate. This should include support for organisations wishing to expand or merge to ensure they have the capacity to provide public services. More support needs to be provided to enable such organisations and groups to

- (a) tender for services that the local authority commissions and**
- b) make sustainable proposals under the 'Right to Provide' and 'Right to Challenge'. Specialist support could be offered to such organisations for a time limited period to build capacity for dealing with Human Resources, legal considerations, Health and Safety, Insurance, IT, marketing etc.**

Timeframe: The Committee expects significant progress to be made within the next six months.

- 5.7 One of the Council's key corporate policies is strengthening the local economy. In line with this there is a significant program in place to support community, voluntary and faith groups and social enterprises in the borough.
- 5.8 Social enterprise grants delivered through the Lewisham Social Enterprise Fund provide funding to social enterprises in the borough to support them through the current economic downturn and to enhance the services they provide. Community sector grants provide funding for community, voluntary and faith groups, to help them get started and support them to manage premises, community centres and offices. In this context the Council recognises that support and assistance is often required by organisations wishing to expand or merge to ensure they have the capacity to provide public services.

- 5.9 It is noted that there currently are a large number of organisations which offer advice and assistance to help build capacity for dealing with human resources, legal considerations, health and safety, insurance, IT and marketing, both within Lewisham and within London. These include the Lewisham Business Advisory Service and the Cabinet Office's Mutuals Information Service. The Council believes that the level of external support in this area is sufficient.
- 5.10 It is recognised that council employees may need some additional support to set up new businesses that are capable of providing public services locally. The framework for expressing mutual proposals as explained above (Response to Recommendation 1) provides employees with the opportunity to meet with the Executive Director for Regeneration to discuss their mutual proposal and to receive initial advice. Additional support and assistance will be offered to employees who submit a feasible proposal. This may take the form of external advice, leave to further develop the proposal or additional internal support.

Recommendation 4

The Council website should have a section on mutualism containing information on

- (a) the policy framework and relevant legislation (e.g. the Right to Challenge and the Right to Provide etc.);**
- (b) the support available for interested parties from the Council and local & national organisations (including links to support organisations and guidelines on tendering for council contracts, submitting 'rights to challenge' etc.) The material should include examples of successful mutuals as case studies. The Council intranet should have clear information for employees considering a spin out proposal.**

Timeframe: The Committee expects the website to be updated within six months.

- 5.11 There is relevant and useful information available on the internet about how to establish and run a mutual and there are a large number of organisations that can support individuals to develop a mutual proposal. It is likely that relevant legislation and guidance in areas such as the Right to Challenge and the Right to Provide is likely to be made public during the next year. It is important to keep both employees and citizens aware of these developments and therefore the Council will provide relevant information both on its website and on the intranet covering a) the policy framework and relevant legislation; (b) the support available for interested parties from the Council and local & national organisations. This information will be

made available online within the next 6 months as recommended by the committee.

Recommendation 5

The support and advice provided by the Council including through the Council website, to people interested in establishing mutual and co-operative organisations needs to be updated and more widely advertised.

Timeframe: The Committee expects this to be completed within six months.

- 5.12 It is agreed that it is important to have this mutuals information available on the website in a location that is easily accessible for interested parties. This will be done within the time frame recommended.

Recommendation 6

The Council should consider whether any Council buildings not in use or not in full use (e.g. space released by the worksmart/office rationalisation programme; or buildings vacated and earmarked for disposal when market conditions are more favourable) could be leased on a short term basis to business start ups.

Timeframe: The Committee expects significant progress to be made within the next six months.

- 5.13 It is accepted that locating suitable and affordable premises can be a barrier to some business start ups. The Council currently owns a very limited number of vacant properties. These are usually disposed of if they have been declared surplus. The sale proceeds are then reinvested in the Council's capital program where decisions are made to deploy resources in relation to the Council's overall corporate priorities. Part of the process in declaring premises surplus is a consideration as to the viability of the use of such buildings for community purposes. This also involves consideration of whether community asset transfer is appropriate. As such it is proposed in the recommendations above that: The Head of Asset Strategy and Development will consider proposals put forward to him by organisations with a viable business case to run a business start up. This will include assessing whether there are any suitable properties available within the Council's commercial or surplus property portfolio which may be helpful in taking forward their proposal.

Recommendation 7

The Committee should receive a progress update on recommendations 1 to 6 in six months' time (to come to the Select Committee meeting scheduled for 12 October 2011).

- 5.14 A progress update will be provided to the Committee on recommendations 1 to 6 in six months time as requested.

Recommendation 8

The Mayor is asked to note that the Public Accounts Select Committee will adopt as an on-going workstream the scrutiny of the process and performance of the Council's work on asset transfer, spin-outs, and commissioning and contracting out to external partners, including social enterprises, VCS organisations, cooperatives and mutuals; and will continue to scrutinise the effectiveness and value for money of the services so provided and make recommendations where necessary for their improvement or reprovision.

- 5.15 The Mayor thanks the Public Accounts Select Committee for the efforts that they have put into the Short Review into Mutualism and welcomes the recommendations that it has put forward. The Mayor duly notes that the Public Accounts Select Committee will adopt as an on-going workstream the scrutiny of the process and performance of the Council's work on asset transfer, spin-outs, and commissioning and contracting out to external partners, including social enterprises, VCS organisations, cooperatives and mutuals; and will continue to scrutinise the effectiveness and value for money of the services so provided and make recommendations where necessary for their improvement or reprovision.

6. Legal Implications

- 6.1 The Constitution provides for Select Committees to refer reports to the Mayor and Cabinet, who are obliged to consider the report and the proposed response from the relevant Executive Director; and report back to the Committee within two months (not including recess). It is therefore requested that a response is provided to the Public Accounts Select Committee in the 2011/2012 municipal year.

- 6.2 The Council will need to be mindful that there are a number of circumstances in which a mutual may be a possible alternative to Council provision. For example, it may be that the service in question is one which the Council seeks to retain responsibility for (perhaps because of the nature of its statutory duties) but where it seeks to contract with an outside organisation to provide it with a view to seeking efficiencies and greater community involvement. There would then need to be a procurement process in accordance with the Council's own standing orders, and the EU public procurement regime where appropriate. In any event, the Council would always need to satisfy its duty of best value.
- 6.3 On the other hand, it may be that the Council is of the view that the service is one for which it no longer seeks to retain responsibility, but rather that it be provided outside Council responsibility. In this case there would be no contract between the Council and the organisation as the Council would be divesting itself of that responsibility altogether. It may instead consider giving support to that external organisation, either through some form of pump priming grant or the making of an asset available probably on a leasehold basis. The intention here would be that no contract existed, but even in these circumstances the legal distinction may be a fine one.
- 6.4 The way in which such matters will be dealt with will depend on the particular circumstances of each proposal, but in each case the Council will have to take a decision in the round, that takes into account the advantages and risks associated with the proposal, not simply from the point of view of the external body, but that of the Council itself and the wider community, on a consideration of all relevant matters at the time.
- 6.5 Issues also arise in relation to the handling of potential conflicts of interest for employees who are employed on contracts which require that they give their whole time to their employment, and who are interested in developing proposals that would take over responsibility for Council services. Their personal and Council interest may easily come into conflict, particularly if what they seek is a contract from the Council to an organisation they propose to establish.
- 6.6 This is one of the reasons why the Council needs to establish a process by which any proposals emerging from employees need to be handled to minimise the potential for these conflicts and breaches of the employee code of conduct. It is very likely to involve an early assessment of whether the proposal if developed may have advantages, and provided the Council wishes to see the proposal pursued, then a separation of the employee concerned from the area of work to which their proposal relates to avoid potential conflict or misuse of Council information for their own purposes. The employees themselves then need to commit their own time and resources to developing their proposal.

- 6.7 Generally, where a proposed organisation seeks to operate under contract with the Council, there will need to be a robust procurement process in accordance with standing orders, and EU law where necessary, and the Council would have to ensure that it does not fall foul of the law relating to State Aid. TUPE applies on the transfer of an undertaking so that employees engaged in the undertaking transfer to the new employee with their terms and conditions intact. This may very well apply on the transfer of any of the Council's services, depending on the circumstances of the proposal.
- 6.8 The establishment of a mutual is a risky business for those involved in it. It may fail, and many personal resources may have been committed to it in a time of austerity. Those concerned with establishing such an organisation need to be conscious that once they move out of the Council they are effectively in the same position as any other external organisation. If the Council is to avoid challenges of anti- competitiveness in contracting, it must then treat them no more favourably than any others.

7. Financial Implications

- 7.1 At this stage there are no specific financial implications attached to initial agreement to set up a framework to assess the viability of mutual ventures. There are however significant potential financial implications to be considered before the council enters into any specific agreement on a mutual venture.
- 7.2 Mutual organisations can take a variety of forms and involve a variety of financial risks for the council. Any future proposal for the council to enter a specific mutual venture would need to be the subject of a further report to examine the financial implications and risks associated with the individual proposal concerned.

8. Crime and Disorder Implications

- 8.1 There are no direct crime and disorder implications arising from this report.

9. Environmental Implications

- 9.1 There are no direct environmental implications arising from this report.

10. Equalities Implications

- 10.1 The Council is considering ways to secure greater community involvement in public services through exploring the potential of mutual organisations to deliver services. In choosing an appropriate format to deliver public services, the Council will be looking to create

an environment in which services are demonstrably delivered in the public interest, within a 'safe' and accountable framework.

- 10.2 In establishing a process for assessing appropriate and viable mutuals, the Council will need to consider governance arrangements which ensure that the objectives of all stakeholders are aligned.
- 10.3 The Council corporate priority 'Inspiring efficiency, effectiveness and equity' champions equity in the delivery of excellent services to meet the needs of the community.
- 10.4 The Council's Comprehensive Equality Scheme 2008-11 (CES) states:-
"We promote equality and prevent discrimination through our roles as:
- service provider
 - employer
 - community leader.
- "We follow best practice in all equality areas and work to:
- eliminate unlawful discrimination
 - eliminate harassment
 - promote equality of opportunity
 - promote good relations between different groups in the community
 - recognise and take account of people's differences."

10.5 The CES is underpinned by a range of equality objectives which includes the following:-

 - Encourage (and, where legally possible, require) others to adopt this policy, including those who provide goods and services on behalf of the Council.

10.6 The Council will also need to ensure through effective commissioning and governance arrangements, that any service provided on behalf of the Authority by mutuals, is meeting the requirements of the Equality Act 2010.

For further details on this report contact Jonathan Stevens 0208 3147043

BACKGROUND PAPERS

Public Accounts Select Committee Review of Mutualism March 23 2011 – available from Charlotte Dale 0208 3149534