



Social enterprise, mutual, cooperative and collective ownership models

A practical guide

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The guide was up-to-date at the time of publication in February 2011 and reflects the current legislation. Changes to legislation can be made by the Government in the future.

Introduction

This publication is intended to provide helpful and practical guidance for councils when considering how in-house services can be delivered through various different models.

Many social enterprises, staff mutuals, cooperatives and other employee-led models are expected as a result of the decentralisation agenda and the Localism Bill (see Appendix A). This guide concentrates on the main employment issues for councils and offers guidance in responding to employee requests to deliver local services. It includes the top ten things to consider when responding to an employee request to run a social enterprise, along with some sample letters which councils may want to use, some useful sources of information and some points to take into account regarding TUPE, pensions and procurement issues.

Section 1: Making the change

1.1 What is a social enterprise?

The Government's definition of a social enterprise is: "a business or service with primarily social objectives whose surpluses are principally reinvested for that purpose in the community, rather than being driven by the need to maximise profit for shareholders and owners".¹

This guide focuses on the set-up of social enterprises and explores some of the associated benefits and challenges. However, it should be noted that change can take many forms and should not be solely limited to social enterprise. There are many different models of delivery which councils may want to consider and further information on managing change is available by clicking onto the following link: Change toolkit: www.idea.gov.uk/idk/core/page.do?pagelId=5817020

1.2 Defining the business case

Key to any successful change or social enterprise is the development of a robust business case, including:

- how stakeholders, including communities and Trade Unions, are engaged

- realistic financial modelling
- partnership options.

The Government has committed to "giving public sector workers a new right to form employee-owned cooperatives and bid to take over the services they deliver".² A model for this approach exists within the NHS and is described below.

1.2.1 The NHS Right to Request model

The Right to Request enables frontline NHS staff employed by Primary Care Trusts (PCTs) to set up a social enterprise to deliver healthcare services to NHS patients.

The scheme entitles clinical staff to request to deliver their services through a social enterprise. Staff have the right to put forward a social enterprise proposal to their PCT board, and to have this proposal considered. PCTs are obliged to consider these applications and, if a proposal is approved, to support the development of that social enterprise. This includes awarding them a contract for the provision of services for an initial period of up to five years. Innovation and the improvement of health outcomes must be central to all Right to Request applications.

Any member or group of frontline PCT staff can exercise their Right to Request. Once proposals are approved and the new provider organisation is set up, staff transfer

¹ <http://tinyurl.com/ydmhnqm>

² Building the Big Society, May 2010
<http://tinyurl.com/3pwhx54>

to this organisation under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). This means that the existing terms and conditions of employment, including access to the NHS Pension scheme, are legally protected at the point of transfer.

The process, briefly, is as follows:

1. Staff identify local needs, patient priorities and community requirement.
2. Staff talk about ideas with colleagues and gauge interest.
3. An expression of interest is put forward to the PCT board, which includes:
 - a summary
 - the background
 - aims and objectives, including vision, mission and strategic objectives
 - range of services
 - stakeholder engagement
 - partnership/collaboration
 - costs
 - risks
 - governance
 - timescales.

At this expression of interest stage, it is not expected that full details are provided; it is more that the issues have been understood. The expression of interest is submitted to the PCT board, and subject to the Strategic Health Authority (SHA) assurance process.

4. Should the expression of interest be approved, a detailed five year integrated business case is developed and submitted, again subject to the SHA assurance process. This can take around six months and longer for complex services.

5. Staff are engaged and business skills developed. Any skills gaps would have been explored in both the expression of interest and business case stage.
6. Again, subject to the SHA assurance process, approval for the business case is received from the PCT board and SHA.
7. The social enterprise is established in 'shadow form', with staff still employed by the PCT. This runs for six months while any necessary adjustments are made.
8. Staff are transferred to the independent body under TUPE.

1.2.2 Approval processes

As shown in the NHS model above, there is a defined assurance process in place. The draft Localism Bill states that councils may only reject the expression of interest on grounds specified by the Secretary of State by regulations. Pending further guidance, councils would be well advised to plan for how requests to form Social Enterprises are responded to. Suggested criteria could include:

1. Costs – are they understood by the applicant(s), and are there suitable financial projections?
2. Community benefit – who is the service being provided to, and does the proposal meet minimum statutory or custom and practice service levels?
3. Growth potential – has the applicant understood the nature of the 'business' they are proposing and to what extent are they in competition with existing businesses or similar new start-up social enterprises?
4. Staff cohesion – is there a clear mandate from all members of the applicant staff group?
5. Support – what support from the council is being asked for? What support can the council offer independently of the request?

1.3 Accessing resources

“The Government has committed to setting up a Big Society Bank to give social enterprises, charities and voluntary organisations access to greater resources. It will be set up using money from dormant bank accounts (those untouched for 15 years or more and available for spending in England) and will encourage investment in social change.”³

It is anticipated that this resource will be available from April 2011, although, at the time of writing the application process is not clear.

1.3.1 Sources of funding

A number of national and regional organisations and agencies currently provide funding and support to help social enterprises.

Funding may be available through the following sources:

Loan finance may be more accessible to social enterprises from community development organisations and micro-finance institutions, including Community Development Finance Institutions (CDFIs), rather than from conventional sources such as banks. CDFIs specialise in providing finance to new and growing businesses, including social enterprises in disadvantaged areas. Most CDFIs are members of the Community Development Finance Association (CDFA), which can provide further information.

Tel: 020 7430 0222

Website: www.cdfa.org.uk

Bridges Ventures manages the Social Entrepreneurs Fund, which invests in social enterprises. Further information on their

application criteria is available on their website.

Tel: 020 7262 5566

Website: www.bridgesventures.com/social-entrepreneurs-fund

The ‘Real Help for Communities’ Modernisation Fund is a package of support aimed at helping social enterprises in England to survive the current economic downturn. Funding ranges from bursaries of £1,000, grants up to £10,000 and interest-free loans of between £30,000 and £500,000. Further information on eligibility and the application process is available on the Modernisation Fund website.

Website: www.modernisationfund.org.uk

The Local Investment Fund provides loan finance of between £25,000 and £250,000 to social enterprises in England. They also manage a number of regional community loan funds providing loan finance of between £15,000 and £100,000.

Tel: 020 7680 1028

Website: www.lif.org.uk

The Social Enterprise Loan Fund provides loans of up to £250,000, to cover working capital and the purchase of fixed assets, land or property, to social enterprises in England. Further information and regional contacts, as well as a list of sources of help for social enterprises, are available on their website.

Tel: 020 7680 1028

Website: www.tself.org.uk

Futurebuilders provides grants, loans and business support to social enterprises in England. They have a number of funds available, including funds to help social enterprises tender for public sector contracts. There is further information on what is available on their website.

Website: www.futurebuilders-england.org.uk

³ www.cabinetoffice.gov.uk/content/big-society-overview

The Adventure Capital Fund provides finance and support packages to businesses in England that work to improve their local communities. See the website for further information on funding criteria and availability.

Tel: 020 7488 3455

Website: www.adventurecapitalfund.org.uk

Ulster Community Investment Trust (UCIT) provides loans and business support to community organisations and social enterprises in Northern Ireland. Guidelines for applicants, as well as an application form, are available to download from their website.

Tel: 028 9031 5003

Website: www.ucitltd.com

London Rebuilding Society manages four loan funds specifically for social enterprises in the Greater London area. The society also organises regular events and courses as well as providing advice and support.

Tel: 020 7682 1666

Website: www.londonrebuilding.com

Councils should advise employees who are considering setting up a social enterprise to discuss their needs with resource support organisations to decide the most appropriate route. These discussions will uncover what combinations of support are available, and what liabilities those place on the new Social Enterprise.

1.4 Procurement issues

At the time of writing, it is not clear what impact Government policy will have on procurement rules as they currently exist (see Appendix 1: Localism Bill), and the subsequent impact on social enterprises. The European Union (EU) procurement thresholds currently stand at just over £100,000, requiring a tender process. However, it is worth remembering that:

“Even when a tender process is not subject to the Directives, (for example because the estimated value of a contract falls below the relevant threshold), EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply. Some degree of advertising, which is appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency. This is in line with the UK objective of achieving value for money in all public procurement – not just those covered by the EU Procurement Directives.”⁴

At the time of writing, there is no clear guidance or case law to define which contracts have to be advertised and EU Directives may still apply, even to services exempt from Notices in the Official Journal of the European Union (OJEU).

Councils would be well advised to obtain current and constantly updated information on the procurement position and to make this an absolute priority, in particular developments through the Localism Bill. Future legislation will help to clarify these issues.

Key issues

Many organisations exist to offer support and advice, both for a fee and free, and councils should ensure that social enterprise requestors are getting the best-quality advice and best value for money.

Given the emerging nature of social enterprise delivery of council services, current and accurate advice on procurement and funding matters is essential.

⁴ Introduction to the EU procurement rules: OGC Guidance March 2008

Section 2: Establishing the new venture

2.1 Establishing a business

Establishing the right kind of body appropriate for a social enterprise will vary according to local circumstances. There is no one 'right' way to create the business, as shown in section 1 of this guide. Employees would be well advised to consult:

- an independent company formation agent and/or
- a suitably experienced and qualified accountant and/or
- a specialist legal firm.

Appendix B of this guide lists information and support services which employees could access.

2.2 Forms

The forms to create a company and associated guidance are available online and from the following sources:

Companies House
www.companieshouse.gov.uk

Details on forming a Community Interest Company
www.cicregulator.gov.uk

Details on forming Industrial and Provident Societies
www.fsa.gov.uk/Pages/Doing/small_firms/MSR/index.shtml

Mutual application form
www.fsa.gov.uk/pubs/forms/MS_appform_notes.pdf

Details on registering a charity
www.charity-registration.com/form_a_charity.html

However, it should be noted that there is no requirement for staff to make all, or any, of their side of the preparations before expressing an interest in the work. They can incorporate themselves after becoming the preferred tenderer if the authority accepts tenders from non-corporate bodies who are willing, if successful, to incorporate themselves within whatever timescale the contract lays down.

This is now becoming increasingly common practice, as it enables non-corporate consortia to submit tenders.

2.3 Useful case studies

The Office for Public Management (OPM) have conducted research into shared ownership in practice and the findings from case studies of employee and community ownership of public services can be found by clicking the following link: OPM case studies: www.opm.co.uk/resources/33583

Key issues

The social enterprise agenda offers opportunity to those council employees who are natural leaders and show entrepreneurial skills to come to the fore. However, there are important considerations:

- Ideally, the set-up of a social enterprise venture should be driven by all staff, although it is inevitable that leaders will emerge. Councils should take care to ensure that the whole range of opinions and ideas are considered.
- Councils should satisfy themselves that sufficient motivation and impetus exists to see through the complexities of setting up the venture. Half-hearted applications would be unlikely to reach fulfilment or be successful long-term in a business context.

Section 3: Employee-led organisations – types of models

In the context of employee social enterprise, the types of and descriptions of employee-led organisations can be complex and overlapping. This section describes some current models, highlighting the key elements and differences between each. When creating an employee-led solution to delivering services, it is important to bear in mind that there is no one ‘right’ way to go about it, and a mutual decision would need to be negotiated between employees and employers that offers benefit to both parties. Both parties are strongly advised to take detailed legal advice on the formation of a constitution of the new venture.

Social enterprise for example, has been in place for some years in the leisure services sector and there are currently around 130 ventures nationwide with many different models. They are, for instance, constituted as charities, companies limited by guarantee, and workers’ cooperatives.

The types of bodies available:

3.1 Social enterprise

Social enterprise should best be viewed as an overall term to describe a venture, rather than a delivery vehicle in and of itself.

The Government’s definition of a social enterprise is: “a business or service with primarily social objectives whose surpluses are principally reinvested for that purpose in

the community, rather than being driven by the need to maximise profit for shareholders and owners”.⁵

The key characteristics of a social enterprise are:

1. They trade, ie sell, goods and/or services and any profit or ‘surplus’ made as a result of their trading activities is either ploughed back into the business or distributed to the community they serve.
2. They have a clear social purpose. This may include job creation, or the provision of local facilities eg a nursery, community shop, or social care for the elderly.
3. They are owned and managed by their employees.

A social enterprise can be a Community Interest Company, a Company Limited by Guarantee, a Company Limited by shares, or an Industrial or Provident Society. Many also take charitable status, such as Housing Associations.

3.2 Community Interest Companies (CICs)

CICs are companies limited by shares or guarantee which have applied for registration and have satisfied the Regulator of Community Interest Companies (CREG) that

⁵ <http://tinyurl.com/ydmhnqmq>

they are in the public or community interest. CICs are those formed under the Companies Act 1985 and are bound to use their assets, income and profits for the benefit of the community they are formed to serve.

The Companies Act 2004 requires every CIC to have an asset lock (see 3.2.2. Asset Lock) and interest and dividend caps.

3.2.1 Forming a CIC

Forming a CIC is essentially the same as the formation of any standard company (see section 2.1), with one important distinction – the CIC must prepare a Community Interest Statement and pass a ‘Community Interest Test’ both at formation and throughout the life of the company, which must satisfy CREG.

3.2.2 Asset lock

‘Asset lock’ is a general term used to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community.

A transfer of assets must satisfy certain requirements

Where assets transfer from a public sector body to a CIC, certain requirements must be met. This means that the CIC’s assets must either be retained within the CIC to be used for the community purposes for which it was formed, or provision is made so that if they are transferred out of the CIC, the transfer must satisfy one of the following requirements:

- It is made for full consideration (ie at market value), so that the CIC retains the value of the assets transferred.
- It is made to another asset-locked body (a CIC or charity, a permitted industrial and provident society or non-UK based equivalent) which is specified in the CIC’s articles of association.

- It is made to another asset-locked body with the consent of the Regulator.
- It is otherwise made for the benefit of the community.

The benefit to councils of the asset lock is that, should the CIC fail, or be transferred to another organisation, all assets remain for the benefit of the community and cannot be used for other purposes.

3.3 Companies limited by guarantee

Companies limited by guarantee have corporate status and are private limited companies where the liability of the members is limited. They provide a satisfactory basis for most non-profit making activities and are often registered as charities.

A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. Limitation of liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member, or within one year of their ceasing to be a member.

The amount of money that is guaranteed can be as little as £1 and will be stated within the constitution of the company (the Memorandum & Articles of Association).

3.3.1 Why form a company limited by guarantee?

Guarantee companies are useful for non-profit organisations that require corporate status. This means that its profits are not distributed to its members but are ploughed back into company activities. Of course, this does not mean that the guarantee company cannot make a profit, as indeed it is almost paramount that it can and does so. Where an

organisation is likely to enter into contracts it may need the benefit of limited liability to protect its board of trustees and its members, who may be involved on a voluntary basis. The following are examples of these contracts:

- employment contracts
- purchasing land, buildings or property
- contracting with service or product providers
- contracts with fund raisers.

A guarantee company provides a clear legal identity. This provides the ability for the company to own property in its own name and a democratic structure where its participants are required to adhere to the strict laws and regulations governing limited companies generally.

3.3.2 What are the differences between a company that is limited by guarantee and a company that is limited by shares?

A guarantee company does not have shares. The members of the company do not own the company but are the decision makers for the company. This means that the profits of the company cannot be distributed to the members through dividends and that they do not have any claim upon the assets of the company.

The members of the company may appoint directors often called 'Trustees', who are given the responsibility for creating and implementing policies for the company. The directors also enjoy limited liability, provided that they have not acted negligently, or fraudulently, and have not allowed the guarantee company to continue trading when it was insolvent (this is known as 'wrongful trading').⁶

⁶ <http://tinyurl.com/3dqgyqy>

3.4 Mutuals or Industrial and Provident Societies

An Industrial and Provident Society (IPS) is an organisation set up to carry out a trade or business for community benefit. It is incorporated, which means that it has gone through the registration process that converts a new or existing business into a corporate body, making it a legal entity in its own right. IPSs are regulated by the Financial Services Authority, which took over from the Registrar of Friendly Societies (both being supervised by the Treasury).

3.4.1 Types of IPS

IPSs fall into two categories. An IPS qualifies for registration if:

It is a society for carrying on any industry, business or trade; and it is either:

- i. a bona fide cooperative; trading for the mutual benefit of their members
- or
- ii. if its business will be run for the benefit of the community (that is, people other than its own members), and there are special reasons why it should be registered as an industrial and provident society rather than as a company under the Companies Act 1985.

IPSs may in general conduct any legal business except that of investment for profit.

Both types of IPS have a share capital, but it is usually not made up of equity shares like those in a company limited by shares, which appreciate or depreciate in value with the success of the enterprise that issues them. Rather they are par value shares, which can only be redeemed (if at all) at face value. The profits and losses of an IPS are thus the common property of the members. The share

typically acts as a 'membership ticket', and voting is on a one member, one vote basis. The maximum individual shareholding is currently set at £20,000 (although other IPSs may hold more shares than this).

Key features

An IPS has:

- a written set of rules
- a legal identity
- the ability to own property
- the ability to enter into contracts
- additional legal requirements, eg company law
- limited liability (ie the liability on management committee members is usually limited to a nominal amount)
- a profit-making ability, which is put back into the organisation.

It is important to note that limited liability does not protect individuals that act negligently, improperly, fail to meet obligations under company law or trades without sufficient assets to cover debts, and so forth.

Common examples: community businesses

Consumer, agricultural and housing cooperatives, working men's clubs, Women's Institute, markets, allotment societies, mutual investment companies, friendly societies and housing associations usually incorporate as IPSs, as do some social enterprises. This process is facilitated by the existence of 'model rules' developed by various federal bodies, which reduce the legal costs, as bespoke model rules do not have to be created. Credit unions and building societies, which sprang from the same roots, are now governed by specific legislation.

3.5 Workers' cooperatives

A workers' cooperative exists for the mutual benefit of its members and has its own registered objects, which state permitted activities and rules.

Cooperatives are organised on a one member, one vote basis. Members are equal and elect management committees to run the business in accordance with members' instructions. No member can hold a majority shareholding and shares may not exceed £20,000 each except those held by other cooperatives, or those held by councils if assisting a cooperative which is also a housing society.

Any surpluses have to be dealt with in accordance with their rules and if they are distributed, this must be done in the form of dividends.

3.6 Charitable status

A charitable body must be established for public benefit and all of its purposes must be exclusively charitable. This means that its funds and assets have to be used for charitable purposes, which severely restricts the payment of salaries or dividends, or the award of business contracts to its trustees.

Charitable bodies are exempt from income and corporation taxes on all their income provided these are used for charitable purposes, but not VAT. To qualify for an exemption, any trade has to be conducted in the course of carrying out the primary purpose of the charity; or in the course of work done by the beneficiaries of the charity. If the charitable body has revenue-producing activities it can still preserve its charitable status by hiving off these activities to wholly-owned (non-charitable) subsidiary companies.

Constraints on the use of charitable funds and assets make any earlier transfers, donations

or grants to a charity virtually irreversible and bodies which do anything which results in the loss of their charitable status do not just carry on as non-charitable bodies; their charitable property can instead be used only for some new charitable purpose.

There is also considerable competition for charitable funding so a key consideration is that funds can be found to establish the charity.

3.6.1 Charitable purposes

An organisation can register as a charity only if it has purposes that are wholly and exclusively charitable and are for the benefit of the public. As part of the registration process, applicants must explain how their organisation's aims satisfy these legal requirements.

The Charities Act 2006 defines 13 possible purposes for charities in England and Wales. A charity cannot have some purposes that are charitable and others that are not.

Those purposes are:

1. prevention or relief of poverty
2. advancement of education
3. advancement of religion
4. advancement of health or saving of lives
5. advancement of citizenship or community development
6. advancement of the arts, culture, heritage or science
7. advancement of amateur sport
8. advancement of human rights, conflict resolution or the promotion of religious or racial harmony or equality and diversity
9. advancement of environmental protection or improvement
10. relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage

11. advancement of animal welfare
12. promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services
13. other purposes currently recognised as charitable and any new charitable purpose which are similar to another charitable purpose.

Charity formation is complex and highly regulated, and should this approach be taken, specialist advice is essential. Aside from the CIC formation discussed in section 3.2, it may be possible to create a venture which is also a charity and therefore qualifies for tax incentives. Again, specialist advice would be recommended at the formation stage.

Key issues

As this section illustrates, there are many alternative forms of bodies available to deliver social enterprise ventures. No type of body has all the pros and none of the cons.

Councils should ensure when considering social enterprise requests:

- that employees have considered all options and the proposed body is appropriate to deliver the service needs
- that employees have taken robust advice on the best route and researched similar ventures to present fully rounded options.

A summary of legal structures for social enterprises is available via the following link: Business Link: www.businesslink.gov.uk

Section 4: Transfer of Undertakings (Protection of Employment) TUPE

4.1 TUPE – a brief overview

Where a social enterprise body is established to deliver local services, the question will arise of whether local authority employees who may currently be delivering those services should transfer to the social enterprise under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the TUPE Regulations).

The question of whether TUPE applies will depend on whether there has been a ‘relevant transfer’ (see 4.1.1 below) from the authority to the social enterprise. Where there is a ‘relevant transfer’, the expectation is that those employees working in the transferring part of the service will transfer to the social enterprise, with their terms and conditions of employment protected under TUPE.

4.1.1 Relevant transfers

Under the TUPE Regulations a ‘relevant transfer’ occurs when:

- A business, undertaking (or part of one) is transferred from one employer to another as a going concern. This is known as a ‘standard transfer’.
- A client engages a contractor to carry out work on its behalf, or where it re-assigns such a contract – including bringing the work back ‘in-house’. This is known as a ‘service provision change’ transfer.

4.1.2 Standard transfers

The TUPE Regulations state that a standard transfer will occur in the case of a “transfer of an undertaking, business or part of a business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity”.

Therefore, to ascertain if there is a relevant transfer, four questions must be answered:

- Was there a transfer ‘to another person’? (‘Person’ in this context does not solely mean an individual; it is as equally applicable to an organisation.)
- Did an ‘economic entity’ transfer? (In this context an ‘economic entity’ can apply to a public sector entity such as a building.)
- Did the economic entity ‘retain its identity’ after the transfer?
- Was that entity ‘situated immediately before the transfer in the United Kingdom’?

If the answer to these questions is yes, then it is a relevant transfer, offering employees protection under the TUPE Regulations.

4.1.3 Service provision change transfers (SPCs)

The TUPE Regulations set out three types of SPCs:

1. Where ‘activities cease to be carried out by a person (‘a client’) on his own behalf and are carried out instead by

another person on the client's behalf ('a contractor'). This is commonly known as 'contracting out' or 'outsourcing'.

2. Where 'activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ('a subsequent contractor') on the client's behalf'. This concerns 'second generation' transfers – see section 4.7.
3. Where 'activities cease to be carried out by a contractor or subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out by the client on his own behalf'. This is commonly known as 'bringing back in-house'.

In the context of the establishment of a social enterprise, the 'client' would often mean the council. Therefore, for example, if a social enterprise took over a council's library services and operated them on the council's behalf, it may mean that an SPC transfer occurs and the employees working in library services would transfer to the social enterprise.

4.2 Situations where TUPE applies

A relevant transfer under TUPE has been found to apply to:

- mergers
- sales of businesses by sale of assets
- a change of licensee or franchisee
- contracting out of services
- changing contractors.

However, TUPE does not apply to:

- transfers by share take-over
- transfers of assets only (for example, the sale of equipment alone would not be covered, but the sale of a going concern including equipment would be covered)
- transfers of a contract to provide goods or services where this does not involve the transfer of a business or part of a business
- the supply of goods for the client's use (for example, supplying food to a client to sell in its staff canteen, rather than a situation where the contractor runs the canteen for the client).

4.3 Who and what transfers?

When a relevant transfer occurs, the new, transferee employer automatically takes over the contract of employment of the employees working in the undertaking that transfers, along with the rights and liabilities in connection with the contract. Continuity of employment is protected on the transfer.

In a social enterprise situation, it will often be the case that the undertaking which transfers to the social enterprise will be a relatively small part of the council's functions. Therefore the parties will need to establish which of the council's employees should transfer to the social enterprise. This is a question of working out who is 'assigned' to the undertaking. The TUPE Regulations do not define what 'assigned' means, but it is normally a question of working out how much time the relevant individual spends working in the undertaking that is to transfer. If they spend most of their time working in the undertaking, then the expectation would be that they transfer. However, other factors such as the value of the individual to the undertaking and their contractual terms may be relevant.

In terms of the rights and liabilities that transfer, these are:

- express terms in the employee's contract of employment (including terms negotiated at a national and local level), for example:
 - pay scales, rates and pay intervals
 - job title
 - job function
 - place of work
 - hours of work
 - salary
 - holiday entitlement
 - enhanced contractual sick pay
 - enhanced contractual maternity pay
 - notice
 - disciplinary grievance and other procedures
- implied terms in the contract of employment – those terms that both parties are taken to have agreed to, which include:
 - terms that are too obvious to need recording
 - terms that are part of the custom and practice of the business or industry
 - terms that can be logically deduced from the conduct of the parties.

As rights and liabilities in connection with the contract transfer (not just the contractual terms themselves) so does liability for statutory claims, also transfer. For example, liability for a discriminatory act which occurred before the transfer date would transfer to the new, transferee employer.

Trade union recognition may also transfer to the new, transferee employer. This will be the case where after the transfer; the transferred

employees maintain a distinct identity in the social enterprise.

The position on pensions is set out in section 4.8.

4.4 Employers' liability

Generally speaking, at the point of transfer, liability for the employees becomes that of the 'transferee' party (the social enterprise organisation that will now deliver the service). This includes liability for claims arising out of acts of omissions done by the transferor employer (in this type of case normally the council) up to the date of the transfer. However, sometimes the transferor employer will agree to indemnify the transferee employer for any liabilities it may take on in respect of the period up to the transfer. Whether that will be appropriate will depend on the particular circumstances of the social partnership.

4.5 Information and consultation obligations

On a TUPE transfer both the transferee and transferor employer are under a duty to inform and consult on the transfer with the appropriate representatives of all affected employees. In the case of a transfer of employees from a council, it is anticipated that the appropriate representatives would be the trade union representatives. For those employees not covered by trade union representatives or other formal workplace representatives, elected representatives would have to be put in place. Affected employees include not only the transferring employees, but those remaining with the transferee (ie council employees, who will be affected by the transfer).

There is no set time scale over which the informing and consulting process must take place. However, it is important that enough time is allowed to enable meaningful consultations to take place, as a failure to inform or consult can result in each affected employee being awarded up to 13 weeks' pay. Both the transferee and transferor can be liable to pay that award.

This is an outline of the informing and consulting obligations, and on a transfer, further advice should be sought on the full extent of the parties' duties. Further information on TUPE is available by clicking here: [e-guide to TUPE: www.lge.gov.uk/tupeguide](http://www.lge.gov.uk/tupeguide) (Registration/login required)

4.6 Post-transfer issues

In many cases the social enterprise will simply continue to apply the existing terms and conditions that transferred. However, sometimes it may be necessary to make changes to terms and conditions.

The TUPE Regulations are designed to protect the transferring employees. Therefore, the Regulations restrict the ability to make changes to terms and conditions or to make dismissals, where those changes or dismissals are connected to the transfer.

However, the key to being able to make changes or dismissals will often be linked to whether the employer has an economic, technical or organisation (ETO) reason for the change or dismissal. In a social enterprise situation, this will often be the case (see section 4.6.3 below). It is important though that the process is handled properly to comply with legal obligations and to maintain good employee relations. Sections 4.6.1-4.6.3 outline how and when changes can be made.

4.6.1 Changes to terms and conditions

Under TUPE, changes to terms and conditions will be possible if they are agreed and:

- a. are unconnected to the TUPE transfer (this will not often be the case)
- or
- b. if the changes are related to the transfer, that the changes are for an economic, technical or organisational ETO reason, entailing changes in the workforce. Changes in the workforce means changes in job functions, or numbers in the workforce as a whole.

If the change to the terms and conditions is unconnected with the transfer, it does not mean that the variation is necessarily lawful. In summary, the change will only be lawful if the employee agrees to it.

4.6.2 Dismissals

Dismissals are possible in a TUPE situation, provided:

- a. the dismissal is unconnected with the transfer (for example it is for an unrelated disciplinary matter)
- or
- b. if the reason is connected with the transfer, it is for an ETO reason.

As with variations to contracts it is important that the correct processes are followed and further information is available by clicking here: [e-guide to variations of contracts: www.lge.gov.uk/variationguide](http://www.lge.gov.uk/variationguide) (Registration/login required)

4.6.3 The economic, technical or organisational (ETO) reason

It cannot be stressed too strongly that the ETO must be valid, real and justifiable, and the party making the changes must be relying on its own ETO reason. If this cannot be proven, any purported variation of the contracts would be void or any dismissals connected with it would be viewed as automatically unfair.

The Regulations do not define what an ETO reason is, but in the context of a social partnership, examples may be:

- a. Economic: the need to improve profitability and therefore increase the viability of the social enterprise.
- b. Technical: the introduction of new machinery/equipment that requires less labour.
- c. Management: the removal of supervisory grades, with those supervisory functions being carried out by other existing management posts.

In a social enterprise context, part of a responsible business planning process must include detailed financial projections; business strategies and so forth. The social enterprise could show that it has an ETO reason as part of its business plan, but it must be a genuine and valid.

It is important that social enterprises managing transferred employees are very clear about the reasons for variation and ensure that essential steps are taken, including:

- undertaking individual consultation with those involved
- where appropriate, undertaking collective consultation with union or elected employee representatives

- where a workforce reduction is necessary to create a viable business, a thorough and exhaustive process is undertaken to ensure fair selection.

Even if all these steps are followed, there is no guarantee that the ETO changes or dismissals cannot be challenged.

4.7 'Second generation' transfers

Where a service transfers from the original provider to a subsequent transferee, TUPE will apply to the subsequent transfer. So, in the case where a transfer has been made, it subsequently transfers to another provider and the original terms and conditions have remained unchanged, current conditions would be maintained. If terms and conditions have been changed, it is those latter terms that would transfer to the subsequent transferee.

4.8 Pensions

Rules on pension transfers are complicated for the pension non-professional. When considering social enterprise transfers, the council should consult with the pensions manager of their LGPS administering authority and may need to take legal and actuarial advice to ensure that the pension implications (and costs) associated with such a transfer are fully understood and accounted for.

4.8.1 Overview

The combination of:

- a. DCLG Circular 03/2003 (Local Government Act 1999: Part 1 Best Value and Performance Improvement) and Annex D of that Circular, which contains the Code of Practice on Workforce Matters in Local Authority Service Contracts and
- b. Sections 101 and 102 of the Local Government Act 2003

provides a package of measures designed to ensure protection of the terms and conditions of transferred staff as well as fairness for new workers taken on to work on local authority service contracts alongside a workforce transferred from the local authority.

The Directions Order issued under Section 101 requires that transferring local authority employees must be offered the right to acquire future pension benefits which are:

- the same as, or
- broadly comparable to, or
- better than

those they had as an employee of the local authority. This can be achieved by providing the transferred employee with continued access to the LGPS or by providing them with a broadly comparable scheme.

A broadly comparable scheme has to be scrutinised by a qualified actuary in accordance with the Government's Actuary's Statement of Practice to ensure there is no material detriment overall in future pension rights. Additionally, bulk pension transfer terms between the LGPS and the broadly comparable scheme may be agreed.

Paragraph 10 of the Code of Practice requires that new employees taken on to work on the contract after the work is outsourced are offered one of three options regarding pensions. These are:

- membership of the LGPS
- membership of a good quality employer pension scheme being either a contracted out, final salary defined benefit scheme, or a defined contribution scheme. For defined contribution schemes the employer must match employee contributions of up to 6 per cent
- a stakeholder scheme under which the employer must match employee contributions of up to at least 6 per cent.

4.8.2 Access to the LGPS

Access to the LGPS can be achieved in a number of ways, depending on the type of employer to whom the employees are being transferred.

Town and Parish Councils

A Town or Parish Council can pass a resolution specifying individual employees or a class of employees as being eligible for membership of the LGPS.

Companies under the control of the local authority

A company under the control of a local authority can pass a resolution specifying individual employees or a class of employees as being eligible for membership of the LGPS. 'Under the control' has the meaning given in section 68 or, as the case may be, section 73 of the Local Government and Housing Act 1989 (except that any direction given by the Secretary of State must be disregarded).

Community admission bodies

The following employers can apply to the pension fund administering authority to be a community admission body, thereby allowing their staff to participate in the LGPS under an admission agreement:

- A company which, for the time being, is subject to the influence of a local authority. 'Subject to the influence' has the meaning given in section 69 of the Local Government and Housing Act 1989.
- A body, other than the governors or managers of a voluntary school, which provides a public service in the UK otherwise than for the purposes of gain and which either:
 - has sufficient links with the local authority for there to be a community of interest (whether because their operations are dependent on each other or otherwise), or
 - is approved by the Secretary of State for the purposes of admission to the LGPS.
- A body, other than the governors or managers of a voluntary school, to the funds of which a local authority contributes.

Whilst such employers can apply for admission body status, the pension fund administering authority is under no obligation to accept the application. Where it does so, the admission agreement would be subject to the terms set by the pension fund administering authority.

Transferee admission bodies

A transferee admission body is an employer, other than a community admission body, that provides:

- a service or assets in connection with the exercise of a function of a local authority, as a result of the transfer of the service or assets under a contract or other arrangement

or

- a public service and is approved by the Secretary of State for the purposes of admission to the LGPS.

Full guidance on this can be found in 'Admitted body status provisions in the Local Government Pension Scheme when services are transferred from a local authority or other scheme employer', Department for Communities and Local Government, Crown Copyright, 2009.

Unlike community admission bodies, the pension fund administering authority cannot veto an application from a transferee body if the transferee body and the local authority letting the contract both agree to meet the requirements of the LGPS Regulations.

4.8.3 Brief overview of admission body status (ABS)

As a brief overview, 10 key points to consider on ABS in an employee-led spin-out are:

1. It is important to discuss pension issues at the earliest possible opportunity with both the 'letting authority' (the council of the spin-out venture) and the 'LGPS administering authority' (the organisation running the pension service). These could be the same organisation.

2. ABS is not a requirement of the contracting-out process, so the employees considering the spin-out should consider a 'broadly comparable pension' and balance the options as part of their business proposal.
3. It is the administering authority that enters into the agreement with the new (spin-out) body but, in the case of a transferee admission agreement (other than one approved by the Secretary of State), the letting authority must also be a party to that agreement. In the case of a transferee admission agreement an administering authority cannot decline to admit the spin-out body if the spin-out body and the letting authority agree to meet the relevant requirements of the LGPS Regulations (but the administering authority can decline an application from a spin-out community body).
4. The transferred employees and any new employees specified in the admission agreement as being eligible for membership of the LGPS are treated as if they were employed by a scheme employer, but their participation is contractual not statutory.
5. Admission agreements can be 'closed' or 'open':
 - a. 'closed' – only those employees engaged at the point of transfer can participate in the scheme
 - b. 'open' – both transferred and new employees can participate in the scheme.
6. However, in the case of a transferee admission agreement, employees of the spin-out body only remain eligible for participation in the LGPS for so long as they continue to be employed in connection with the delivery of the local authority's outsourced function. This could mean that should the spin-out diversify into other ventures, not connected with the authority's outsourced function, those employees engaged in such other work could cease to be eligible for continued participation in the LGPS.
7. In the case of a transferee admission agreement (other than one approved by the Secretary of State), the letting authority should carry out, with appropriate actuarial advice, an assessment of the level of risk that could arise upon the spin-out's premature termination, insolvency, or winding-up. This may result in the spin-out having to provide a bond or indemnity to meet the level of risk (unless the letting authority agrees that a lower level of bond or indemnity, or no bond or indemnity, is required, in which case the letting authority would, in effect, be acting as guarantor for any pension deficit arising upon the spin-out's premature termination, insolvency, or winding-up). The cost of the bond or indemnity, or level of risk to be covered by the letting authority, would need to be factored into the business case.
8. In the case of a community admission agreement, the pension fund administering authority may seek a bond or indemnity or look to the letting authority to act as a guarantor for any pension deficit arising upon the spin-out's premature termination, insolvency, or winding-up. The cost of the bond or indemnity, or any level of risk to be covered by the letting authority, would need to be factored into the business case.

9. In conjunction with their actuary, an administering authority is required to establish an employer's contribution rate for a new employer (the spin-out body) participating in the scheme. The costs associated with obtaining this should be factored into the business case. It is usual, when assessing the new employer's (spin-out's) contribution rate, for any existing past service underfunding liability in respect of the transferring employees, to be retained by the local authority from whom the employees are transferring.
10. The spin-out will need to obtain their own legal and actuarial advice, as appropriate, to assess the potential pension costs for them as an employer during the lifetime of the contract.

Key issues

Councils should be certain that all transfer issues are addressed and resolved at the earliest stage, to avoid the potential for damaging claims arising from the transfer. In particular, where workforce reductions are a necessary part of the business model:

- that a proper and thorough consultation and selection process is undertaken
- that proper engagement with all affected (both directly and secondarily affected) staff is undertaken by both the social enterprise requestor and the council
- that particular attention is paid to pension issues. Whatever pension option is chosen by the new employer for future pension provision, discussions about pensions early in the process are essential.

Section 5: The top 10 things to consider

In this section, we summarise the important things for employers to consider when responding to a social enterprise request. This list is not intended to be extensive or exhaustive and pending formal guidance on the implications of the Localism Bill; it is intended as a starting point for discussion with applicant employees.

1. Viability

On the assumption that councils have at least an outline business case to consider, does the business case demonstrate enough business acumen and planning to suggest it could be a viable proposition? By what criteria will councils decide? Are the liabilities and responsibilities on each party clear?

2. Capability

Have the applicants identified any skills gaps that exist which need to be filled in terms of running a business? Have they identified and engaged with support mechanisms? What support can the council offer on equitable terms with other social enterprise applicants?

3. Procurement rules

As described in section 1.4, the procurement position as it currently stands is complex, so professional procurement advice to the council at the point of employee request is essential.

4. Social impact

Has the applicant a clear sense of the customer base of the new social enterprise? What stakeholder engagement has taken place, and what results are being presented? Has the applicant considered an increase or decrease in service demand, and is there an outline strategy to deal with both eventualities?

5. Sustainability

Has the applicant a clear business strategy for the long-term sustainability of the venture? Have they considered the 'competition', both public sector spin-outs and private sector organisations and identified potential business opportunities?

6. Approval mechanisms

Has the council, either singly or collectively with other councils, defined by what method it will approve or reject requests? Is the framework the same in each case, or will it be adaptable enough to respond to the different needs and priorities of each request?

7. Sovereignty

Who is the eventual 'owner' of the business? What will happen in the case of property or other resource transfers? Detailed advice to both parties should be sought on leasing/loan/gifting arrangements from expert advisers in the particular field.

8. Shared services

Has the applicant considered and discussed plans with matching services from adjacent councils? If a matching service nearby is planning a social enterprise venture, what potential is there to create a shared approach to minimise later competition for business?

9. Timescales

As shown in the NHS model (section 1.2.1.) creating a social enterprise can be a lengthy process, which could take as long as a year to complete. Councils will need to consider the time it will take to establish social enterprises, in particular any parallel running arrangements in terms of overall organisational budget and service provision pressures.

10. Monitoring

What monitoring and/or quality assurance process is the applicant proposing, or what such assurances will the council require to ensure that quality public services are maintained? Is there a current contractual, commissioning model that could be applied or adapted?

Conclusion

The transition to shared ownership can be complex and often challenging. There is no 'one-size fits all' answer as each council will have different customers, characteristics and choices to make. Each new organisation must be formed to meet the demands and opportunities of the unique circumstances it faces. This guide is intended to provide helpful guidance on how the transition can be made from traditional public service delivery to social enterprise.

However, the transition is just half of the journey. At the time of writing, social enterprises are not guaranteed any form of contract and will need to compete against other private and public organisations. They will also face the lack of stability of future contracts, which can have a negative impact on staff morale and cause real difficulty in attracting private funding. However, once the transition is complete, and a contract has been awarded, effective monitoring and evaluation is essential to help ensure that services delivered are of the highest possible quality, and that they embody the highest standards of integrity, credibility and accountability. Ongoing monitoring and evaluation will help ensure that the social enterprise is working with the greatest possible effectiveness and efficiency, whilst providing value for money and, above all, making a real difference.

What will success look like for social enterprises? For conventional businesses and entrepreneurs, success means cash or growth and this is no different with regard to social enterprises. However, success means much more than that in the case of a social enterprise such as all the wider social, environmental or economic impacts that the business is creating. In this way, social enterprises can be said to have a 'triple bottom line'.

The 'triple bottom line' is a term that was coined by John Elkington in 1994. It was originally conceived to find a language that would explain how corporations should care about more than financial profit and to also think about the social and environmental value they add – or destroy.

Therefore, when evaluating contracts awarded to social enterprises, it is important to also be looking at the social and economic value created and ensuring that environmental and economic impacts are fully accounted for.

Finally, please note that this guide is not intended to be a definitive statement of the law and, as ever, councils need to take their own legal and financial advice.

Key issues

The transition to new ventures is best achieved where Trade Unions are key partners throughout.

Leadership and management are key to the success of the new venture.

Insurance, VAT, IT, human resources, procurement, finance and accountancy are core services, which councils could offer to new ventures to help smooth the transition.

Potential 'deal-breakers' should be resolved at the outset (assets, employee terms and conditions, VAT, pensions).

Under current legislation, social enterprises may face a lack of stability of contracts, and therefore may have to compete against other private and public organisations.

For more detailed, professional employment advice, please contact eru@local.gov.uk or for a more informal discussion, please contact workforce@local.gov.uk in the first instance.

Appendix A: The implications of the Localism Bill – Community Right to Challenge

At the time of writing (February 2011), the Localism Bill has entered the Commons Committee Stage, and the Public Bill Committee has invited evidence from experts and interest groups from outside parliament. This section focuses on the implications of the Bill as currently drafted.

The Localism Bill allows for the delivery of traditionally in-house services to be run through various different models. It gives ‘relevant bodies’ the right to submit an ‘expression of interest’ to run a ‘relevant service’.

‘Relevant bodies’ are defined as:

- a. a voluntary or community body
- b. a body of persons or a trust which is established for charitable purposes only,
- c. a parish council
- d. in relation to a relevant authority, two or more employees of that authority
- e. such other person or body as may be specified by the Secretary of State by regulations.⁷

In the context of employee ‘spin-outs’, it is subsection 5 (d) that confers this right.

A ‘relevant service’ is defined as:

“in relation to a relevant authority, means a service provided by or on behalf of that authority in the exercise of any of

its functions, other than a service of a kind specified in regulations made by the Secretary of State.”⁸

NB The ‘services specified in regulations’ have not yet been made public.

The obligations on councils

Briefly summarised, and extracting some key points for consideration, the Right to Challenge as currently drafted, means that:

- A ‘relevant body’ may submit an expression of interest at any time.
- Or, councils may specify periods when expressions may be submitted, subject to the publication (including websites) of the details.
- Councils can refuse to consider an expression of interest outside specified times, subject to minimum times set down by regulation by the Secretary of State.
- If councils accept an expression of interest they must carry out a procurement exercise which has “regard to the value and nature of the contract that may be awarded as a result of the exercise.”⁹ (See section 1.4 of this guide ‘Procurement issues’.)
- The council must consider in both the expression of interest and the procurement exercise how they would promote or improve the social, economic

⁷ Localism Bill, Chapter 3, 66 (5)

⁸ Localism Bill, Chapter 3, 66 (4)

⁹ Localism Bill, Chapter 3, 68 (3)

or environmental well-being of the area. In the consideration of the procurement exercise, this “applies only so far as it is consistent with the law applying to the awarding of contracts...”.¹⁰ Councils may only reject the expression of interest on grounds specified by the Secretary of State by regulations. (NB These regulations are not yet published.)

- With the agreement of the ‘relevant body’, councils may modify an expression of interest, if it would not otherwise be ‘capable of acceptance’.
- A ‘relevant body’ may withdraw the expression of interest, which does not prevent the council carrying out the procurement exercise.

Key issues

Subject to parliamentary approval, the Localism Bill will obtain Royal Assent in autumn 2011 and the Community Right to Challenge will commence from April 2012 at the earliest.

¹⁰ Localism Bill, Chapter 3, 68 (7)

Appendix B: Information sources

Social Enterprise Coalition

www.socialenterprise.org.uk

The Social Enterprise Coalition represents a wide range of social enterprises, regional and national support networks and other related organisations.

Co-operatives UK

www.cooperatives-uk.coop

Co-operatives UK is the national trade body that campaigns for cooperation and works to promote, develop and unite cooperative enterprises.

School for Social Entrepreneurs (SSE)

www.sse.org.uk

SSE exists to provide training and opportunities to enable people to use their creative and entrepreneurial abilities more fully for social benefit. SSE supports individuals to set up new charities, social enterprises and social businesses across the UK.

Business Link

www.businesslink.gov.uk

Business Link is a free business advice and support service, available online and through local advisers. However, the Business Link regional advisory service will close in November 2011.

Social Investment Business

www.socialinvestmentbusiness.org

The Social Investment Business helps social enterprises, charities and community organisations prosper by providing innovative financial solutions and business support.

Cabinet Office

www.cabinetoffice.gov.uk

The central government department responsible for promoting social enterprise and the voluntary sector.

Community Interest Companies Ltd

www.cicregulator.gov.uk

This is the website of the Community Interest Companies Regulator.

The Employee Ownership Association (EOA)

www.employeeownership.co.uk

EOA provides succession advice to companies considering transition to employee ownership; help to co-owned companies who want to make more of their employee ownership; and information to organisations and individuals with an interest in employee ownership.

Appendix C: Sample letters

C1. Response to an initial employee-led social enterprise request

(adapted from the NHS Right to Request Expression of Interest Guidance and Template and pending guidance on the implementation of the Localism Bill)

Dear (Employee(s))

Social enterprise venture

Thank you for your enquiry about forming a social enterprise venture to deliver services in (Service Area).

To ensure that your plans can be fully understood, and for the council to support you in developing your initiatives, it will be necessary for you to prepare and present to (decision-making panel) an outline business case, setting out your aims and objectives. The format in which you present this is of your own choice, but you should include:

- **A summary** – setting out your overall intent, and summarising the benefits.
- **The background** – what are the social, economic, environmental issues that make your idea a good one? How are services delivered now, and how does your idea improve on that?
- **Aims and objectives**, including:
 - **Vision** – can you contain in one sentence what your ambitions are?
 - **Mission** – the mission statement is a summary of what the organisation does or intends to do, for whom and where. You need to be able to communicate the work of your social enterprise in a way that everyone can understand.
 - **Strategic objectives** – what is it the enterprise wants to achieve in a given period, say, three to five years?
- **Range of services** – a description of the services that your proposed social enterprise will provide. This could include a range of services or a single service area. Briefly explain how the enterprise will ensure the quality of delivery, and monitor and evaluate its performance.
- **Stakeholder engagement** – identify the people and organisations that will have to be involved and informed in the development of your social enterprise. This will include stakeholders such as staff, service users, community organisations and partner organisations.

Once the stakeholders are identified, consider the following questions in relation to each of them:

- o What is their involvement in the social enterprise?
 - o What interest do they have in developing a social enterprise?
 - o How will change affect them?
 - o What influence do they have on the plans?
 - o Who else needs to be engaged?
- Use the stakeholder analysis to identify the key stakeholders and consider how they will be affected by the proposed social enterprise development and how you plan to manage them.

The business case should also document the results of any consultation carried out in relation to your proposed social enterprise.

- **Partnership/collaboration** – if your proposal includes an intention to work in partnership or collaboration with existing social enterprises or other service areas and organisations, you should outline the details here. You should also illustrate how this will benefit service users and the wider community, for example through improved community engagement and ownership.
- **Costs** – it is unlikely that you will have a full understanding of the costs at this stage. You might wish to give an indication of what you think the costs of setting up and running a social enterprise will be and recommend that a full feasibility study be carried out if the submission is successful.
- This section should also include the resources required to progress to a full business case. This may include staff time to complete the case as well as training and business support to enable you to develop the business case.
- **Risks** – list and briefly describe the risks that are immediately obvious in relation to the project. This may relate to staff skills in certain areas, such as financial management, leadership and governance. It may also include competition and the nature of the market for the services you wish to provide.
- **Governance** – social enterprises are often characterised by inclusive governance arrangements. You will need to consider how you will involve staff and the local community in the management and direction of the social enterprise. Some social enterprises, for example, have service users as members and directors of the organisation.
- **Timescales** – provide a general statement as to the approximate length of the project and show approximate milestones. State that detailed timescales will be provided if this expression of interest is approved.

In response to this letter, it would be helpful if you could reply as soon as possible to let me know how long you require preparing your outline business case. In general this should take around two to three months to prepare. If there are any resources the council can provide, or external sources you wish to access, to assist you in this, please let me know. Whilst we must balance your request with ensuring current service provision, we will assist you as far as possible.

I look forward to receiving your proposal.

Yours sincerely
(Signatory)

C2. Provisional acceptance letter

Dear (Employee(s))

Social enterprise venture

Thank you for submitting and presenting your outline business case. I am pleased to tell you that your case has been recommended to go forward to the development of a full detailed business case. Building on the work you have already carried out, we now need a fully costed business case which additionally includes:

- The full costs of setting up your venture. This should include, as accurately as possible:
 1. your initial start-up costs
 2. your on-going running costs
 3. sources and level of funding you will apply for.
- Your proposed staffing structure, including your plans for:
 1. workforce transfer and reductions (if necessary)
 2. management and accountability arrangements
 3. pension arrangements.
- Your business model, detailing how you are constituting your new venture, for example:
 1. Are you setting up a private limited company, an industrial and provident society, or some other type of organisation to deliver the service?
 2. Where do you see growth opportunities and how will you pursue these?
- Your community engagement strategy including:
 1. how the local community will benefit from your venture
 2. how you plan to engage with the community both now and in the future.
- Your implementation plans including:
 1. if you require a period of 'dual running' whilst still employed by the council
 2. how long you anticipate that period to be.

Your business case should be as detailed as possible, and presented in a clear and easily understandable format. You are strongly advised to take professional advice and assistance. A range of organisations exists to assist social enterprise ventures (reference to Appendix B and section 2.2 of this guide) and I would urge you to make contact with these as soon as possible.

Again, I would be grateful if you could advise me of how long you anticipate it will take you to prepare a fully detailed case. In general, this should take no longer than six months.

If there are any resources the council can provide in terms of support or of staff release time to work on this, please let me know. I am sure you would understand that must be balanced with service provision requirements, but all efforts will be made to accede to your request.

Yours sincerely
(Signatory)

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Social Enterprise London

'Transitions: An introduction for public sector staff, showing how making the transition to Social Enterprise could transform your public service'.



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