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Department for Digital, Culture, Media & Sport
Via email: mutuals@culture.gov.uk

14 October 2019

Response to the consultation on the future definition of public service mutuals

The report responds, as appropriate, to the Department for Digital, Culture, Media and Sport' consultation questions from Community Leisure UK and our members. Please find included in Appendix 1 an endorsement letter of this consultation response from CLOA.

About Us

Community Leisure UK is the trade association that represents the largest collective of deliverers of public leisure services in the UK. Equally, members are increasingly delivering cultural services and managing the associated facilities. Therefore, we are keen to ensure that trusts are engaged and contributing to such consultations.

Our 110 members collectively deliver over 45% of public leisure provision in England and Wales, and 85% in Scotland. Their reach into communities is vast accumulating 414m customer visits in 2018. Trusts operate over 3,900 services and facilities and employ over 91,000 staff. Not including self-employed individuals, and teams of volunteers etc.

Most of our members are "spin outs" but refer to themselves as trusts, charities or social enterprises. A small number of our members have accessed the Mutuals Support Programme.

Typically, our members have been operating independently for c. 10-12 years. Some members are much younger and are beginning on their trust journey. One of the most serious risks to their existence is contract retention. Some members are currently facing open procurement to try and retain their contract with their local authority partners, or, members have successfully re-bid for their contract, or the local authority partner has decided to extend their current contract. Unfortunately, a number of trusts have lost their initial "spin out" contract when it went to open procurement and are no longer operational. That independent trust / mutual is no longer in existence.

Over the last two years we have lost eight independent trusts across England, all whom spun out of the local authority. This is of significant concern for all "spin outs", no matter what service sector. There are several reasons for this loss of contract, and these have been raised with the DCMS Mutuals Team. We remain keen to share our knowledge, experience and understanding, to help other mutuals that will inevitably be facing open procurement of their contract at some point.

We raise this significant concern, because there is a role for the public service mutual definition and the Mutual Support Programme, to really help with retaining contracts in an increasingly challenging landscape.

Members typically have contracts for services with local authority partners to deliver across a breadth of leisure and culture services. Many of our members are called a single-contract trust i.e. they deliver the services and manage the facilities on behalf of one, local authority partner. A small number of members hold multiple contracts across England and Wales. Therefore, it is worth nothing that through these contracts the mutual usually has with the local authority (and of course in some cases with other partners e.g. NHS), these arrangements will naturally mean that the local community and their needs are the focus, as local authorities are accountable to their communities and this will pass down through the contract and partnership. This is a powerful lever to focus and shape the delivery of the trust / mutual.

Members are registered as Company Limited by Guarantee and registered charity, Community Benefit Society with charitable status, Community Interest Company, or Charitable Incorporated Organisation / Scottish Charitable Incorporated Organisation. All members reinvest their surpluses into the services and facilities that they run and manage.

This submission aims to provide a response on behalf of members and responds to the consultation questions as best as possible.

1. Origins of public service mutuals

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

1.2 Please provide further information to support your response.

Yes, we do agree that removing the requirement for mutuals to have originated in the public sector is a good approach. This change would better reflect the modern breadth of models delivering public services with a culture and governance structure enabling employee ownership and influence and delivering with a public service focus.

We believe that the status of being a mutual need to align to public sector values and ethos, and that their status should be based on the services they currently deliver, their role and purpose; rather than on their historical roots.

2. Employee influence and control

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

2.2 Question: Please suggest any changes you'd make to the requirements above

2.3 Question: Please provide further information to support your response.

Yes, we do agree with tightening the requirements on employee influence and would like to share some of our experiences on achieving this.

While we agree that a mutual need to have policies in place that protects and enables its status as a mutual, we feel that any requirements on employee influence should be a balanced, appropriate level of influence and not control.

For example, one trust noted that their employees are encouraged to work with a high degree of accountability, autonomy, innovation and productivity. They go on to state that employee ownership or control are therefore not a necessity for their employees to have influence on the mutuals' service delivery. This trust believes that if there are demonstrable mechanisms in place through which employees significantly drive productivity with innovative and flexible services, such as through employee forums or other communication channels that encourages employees to express and explore their ideas, a charitable organisation should be eligible to meet the Public Service Mutual definition and access the support programme.

From experience, we know that some of the proposed requirements work better for employees and gives more influence than others. Equally there is a critical balance to be struck between the organisation truly reflecting and meeting the needs of its communities, independence on the Board (or governing body), and employee influence and ownership.

Board representation by an employees is, in our experience, a better way of ensuring staff influence on strategy and purpose, rather than shared ownership.

In our view shared ownership usually only gives the employee a vote once a year at the AGM on (commonly) less important issues e.g. appointing auditors, accepting accounts etc.

Yet, even with Board representation, in some instances, employee involvement may take the emphasis away from the community that the mutual services are delivering for. Employees may have a less balanced and wholesome view than Trustees or Non-Executive Directors for example. Trustees or Non-Executive Directors are independently appointed for their skills and experience, and importantly to directly represent the local community, therefore providing the appropriate level of scrutiny and governance. Therefore, it is key that mutuals work closely with both their community representatives and their employees to know what is needed and what is possible for the development and sustainability of those public services.

We therefore believe that staff should be able to influence and steer the services and organisation. Staff are already contributing to the decision making of mutuals and charitable organisations delivering public services, but they do not need to be formal shareholders to have a significant, appropriate influence.

3. Mission and profit

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

3.2 Question: Please provide further information to support your response.

There were mixed responses from members to this question on mission. We are concerned that the suggested change is not strong enough to prevent tokenistic inclusion within governing documents, rather than genuinely being a mutual.

For example, in England and Wales, we would raise queries over a Local Authority Trading Company created through Teckal exemption, would be seen as a mutual if they state they have 'a clear social mission' in their governing documents. Yet, LATCs are 100% owned and controlled by the local authority parent, with 20% ability to diversify or develop services outside of the core contract and cannot be charities.

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

3.4 Question: Please provide further information to support your response.

Yes, we strongly agree that mutuals are social enterprises, yet we need to be careful to not exclude other models as discussed earlier. Registered charities have the very same principles as mutuals but will not be a CIC or Community Benefit Society. It is their purpose, role and social mission that counts. We feel strongly that charities should not be excluded from the mutual programme, wider involvement and support.

With regards to 51% reinvestment, we would go further. Especially since this consultation recognises that 92% of mutuals' profits in the last year were reinvested into the organisation, their mission or development which shows that mutuals are socially oriented organisations at their core. We would advocate that 100% should be reinvested in the community served, the organisation's objectives, the services and / or facilities.

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

We do not know whether the potential for investment will be limited in the future, but we believe that even if it does, this potential risk should not receive more attention than the value of promoting and supporting the delivery of quality public services by ethical means.

3.6 Please provide further information to support your response.

How the public service mutual is initially created and supported is important with regards to accessing investment e.g. length of any contracts, any financial support from the pre-spin out organisation i.e. local authority or NHS partners, if a partner will support any unanticipated and significant expenditure, costs of asset maintenance and ownership, contract clauses etc. To help build their resilience and survive, public service mutuals need to be businesses that trade (for a social purpose and reinvestment), yet it is unlikely that they will have access to venture capital where often high growth is anticipated. Dependent on the points raised above, investment from high-street banks may be an option (but history is important), social investment (although the percentage rates can be higher than high-street, and their pay back clauses can be stifling), or through prudential borrowing if a partnership with the local authority exists (yet this may be a cultural issue when the PSM is wishing to be independent and loan rates for local authorities increasing recently). Therefore, care must be taken when constructing the contract environment to ensure the PSM can establish itself robustly and freely to trade and build its financial roots. This means that contract re-procurement needs to be across 8-10-year horizons.

Building on the procurement element above, we recognise and agree with the Government's concern for the challenging financial climate that the public sector faces. Yet, we believe that the Government has an important role to play in rebalancing this environment to level the current playing field for socially oriented organisations, particularly at a local government level. Data obtained through the Fair tax Mark organisation in 2018, concluded that "*...two-thirds of the public agree that the government and local councils should consider a company's ethics and how they pay their taxes as well as value for money and quality of service, when undertaking procurement*" (<https://fairtaxmark.net/trust-in-hmrc-on-the-increase-but-record-levels-of-concern-on-businesses-tax-behaviour/>). Our communities deserve public services that are built around and care about their needs, and Government need to support and enable this e.g. through charitable organisations and public service mutuals being truly recognised for the value and impact of their work as well as the way these services are delivered and invested in. Local government can be supported through the 'Council for Fair Tax' declaration, developed by Fair Tax Mark (<https://fairtaxmark.net/supporters/councils-for-fair-tax/>) which would help with transparency, and level the procurement playing field for organisations like mutuals.

Finally, it is important to raise that any revised definition of PSM or their status, should preserve business rate relief and VAT exemptions. These are pillars of financial support to those organisations eligible for reliefs.

4. Independence and ownership

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

Absolutely yes. The mutual must be independent and not be controlled by another organisation. The mutual must be free to make strategic and delivery decisions as determined most appropriate by their staff, Directors/trustees, and senior leaders; not by a controlling body.

Equally as important is an asset lock where the assets can not be transferred to a private company or control asserted over the asset, by a private company.

For example, our points submitted to the Charity Commission's consultation on 'Charities that are connected with non-charitable organisations: maintaining your charity's separation and independence' in 2018, focused on our concerns on intra-group arrangements, lack of independence, and conflicts of interest through control. These points were included in the Commission's consultation outcome document: "*There should be better coverage of: intra-group arrangements and charges between charities and non-charities, and company law on conflicts of interest.*"

Although included in guidance focused on charities, these points are critical for mutuals as well. Transparency with regards to the organisation's independence is critical, as this leads to greater integrity in the model as perceived by the public, stakeholders, national and local government alike.

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

Dependent on the organisation's legal structure, its character, purpose and mission could be supported through the Fair Tax Mark. This would publicly state the mutual's arrangements, transparency, ownership and profit distribution etc.

Equally as important in our view, is the profits from public service mutuals should not, to any degree, be distributed to private corporations or shareholders.

5. Formal recognition and naming convention

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

Potentially yes. With the proposed broadening of the definition, a table charting the definitions of all organisation structures in this space would be helpful, not just the currently defined public service mutual, but societies, CICs, CLG with charitable status, CIO etc. Factually accurate descriptions of the organisation's legal base, how the structures work and importantly how they are governed. Therefore, anyone could pick up the table and understand the breadth of public service models that have a social mission and reinvestment purpose.

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

We believe this strapline may cause further confusion because everyone may interpret staff-led as meaning different things. If organisations are mutuals and are therefore committed to that mission and purpose, we would favour the term "social enterprise" as is, and not include staff-led. As discussed previously, it is the social mission, public purpose, and staff involvement of the organisation that is important.

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

We believe that abuse of the term and belonging to the mutuals collective needs to be prevented. However, we do not support the formal accreditation as proposed in this consultation; this in our view could create unnecessary administrative burdens.

Our preferred method to uphold the definition and future of the mutual model is:

- Government promotion and support of all organisations delivering to the mission, purpose and staff involvement of the mutual ethos,
- accompanied by a fair procurement and tax playing field,
- promotion of Fair Tax Mark for organisations and local authorities, and
- Charity Commission / Financial Conduct Authority regulatory and governance roles – would be positive and the most effective.

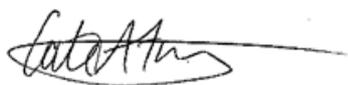
Final comments

DCMS' support for and investment in the Mutuels Support Programme is excellent, and we entirely support this work continuing. It is however important for DCMS to note that "spin outs" can take several forms and structures, and that charitable status and the high degree of governance and statutory regulation from the Charity Commission should also be promoted and supported by DCMS.

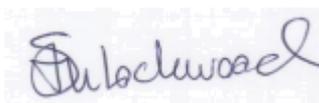
Community Leisure UK occupy a unique birds-eye position that affords us a picture of the public (leisure and culture) service landscape. Ourselves and our members remain keen to be a present and contributing partner to the Mutuels Support Programme and wider DCMS team. We are particularly keen to help other mutuels facing contract procurement and hopefully help and support them.

Thank you for your time and consideration of our response. We look forward to the conclusions of the consultation. If we can provide any further information or perspectives, or if you have any questions please do contact Cate Atwater on the email or telephone below.

Yours faithfully,



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Stuart Lockwood
Chair
Community Leisure UK

Appendix 1 – letter from CLOA Chair



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14th October 2019

Dear Cate,

Response to consultation on the future definition of public service mutual

Many thanks for sharing your response to this consultation.

As you are aware, the Executive Committee of the Chief Cultural & Leisure Officers Association, which represents 330+ senior leaders in the culture sport and leisure sector, has decided not to submit a response independently.

However, having reviewed and commented on the Community Leisure UK draft, we would now like to formally endorse this submission on behalf of our membership.

Yours sincerely,

A handwritten signature in black ink that reads 'Val Birchall'.

Val Birchall, Chair of CLOA