

Public Services, Co-operatives and Mutuels

Best practice guidance

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1 Introduction

- 1.1** Public services have a unique position and role to play as part of our Society. They are not discretionary commodities, and provide benefits not only to service users but to wider society. The founding principles of public services, namely universal access, delivery according to need, services free at the point of use and services delivered for the public good rather than for profit should be at the heart of any model of public service delivery. The TUC believes that the public sector is best placed to provide public services that meet these criteria and will continue to campaign for publicly owned and democratically accountable public services.
- 1.2** Co-operatives and mutuals are independent businesses that exist to meet and fulfil the needs of their members. They provide flexible models based on member ownership, control and self determination that are used to deliver a wide range of products and services. All co-operatives adhere to a unique set of internationally agreed principles that define their difference from other forms of entity. They are the most distinct and long-established form of social enterprise, owned by their members and operating on a democratic basis of one member, one vote rather than an investor model of one pound, one vote.
- 1.3** Co-operatives UK believes that where the transfer of public service delivery to co-operative or mutuals takes place, it should deliver the highest possible service quality with a public service ethos that benefits the shared interests of all stakeholders and members – including users, the wider community and employees.
- 1.4** In some circumstances mutuals and co-operatives will be involved in the provision of public services. This guidance outlines a set of principles agreed between trade unions and representatives of the co-operative sector in relation to the provision of public services by co-operatives and mutuals.
- 1.5** We recognise the shared history and values of the trade union and co-operative movements and their joint commitment to empowering workers and communities, enhancing workplace democracy and supporting alternative models of economic development.
- 1.6** We also recognise the value in co-operatives and trade unions working together to secure the best employment practice and service quality benefitting co-operative members, workers and the public alike. Co-operatives will work with all appropriate unions to secure recognition and partnership to achieve these ends.

2 Context

- 2.1** The aim of the guidance is to set out good practice in the establishment, implementation and delivery of public service co-operatives and mutuals. Recognising that co-operatives and mutuals can adopt and apply a range of models and forms, the guidance sets out areas of best practice to be considered when seeking to establish and implement new entities for the delivery of public services.
- 2.2** This document does not constitute a legally binding agreement and is not intended to replace or undermine collective agreements negotiated by unions and employers.
- 2.3** The guidance sets out best practice guidance in five areas:
- Workforce engagement and consultation
 - Governance
 - Commissioning of services
 - Safeguarding of assets
 - Employment standards
- 2.4** It does not cover other key elements of the development, success or sustainability of new co-operative or mutual enterprises including the business case and supporting financial models.
- 2.5** This document:
- builds on Recommendation 193¹ of the International Labour Organisation on the Promotion of Cooperatives (2002), with particular reference to Paragraph 8 and Section IV covering labour standards and the role of employers', workers' and co-operative organisations and the relationships between them
 - recognises that adherence to the seven principles included within the International Co-operative Alliance (ICA) Statement on the Co-operative Identity² is a prerequisite of co-operative entities
- reflects Co-operatives UK's work on co-operative and mutual identity in a UK context and its voluntary codes for good governance and practice, including the Worker Co-operative Code of Governance³.
- 2.6** The Guidance sets out principles of good practice whilst recognising the central role of the members and governance structures of co-operative or mutual enterprises in determining the best way to deliver public services that provide member value through a sustainable model.
- 2.7** We also recognise that existing agreements between trades unions and employers involved in public services delivery may include provision for a number of the areas covered in this guidance.
- 2.8** Public service co-operatives and mutuals vary greatly in size, form and membership. The principles in this guidance can be used as a benchmark but may be implemented according to individual circumstances on the basis of consultation and negotiation.
- 2.9** This document and emerging trends and practice will be reviewed from time to time by the TUC and Co-operatives UK in order to maintain its relevance and application.

¹ <http://bit.ly/16pyXRA>

² <http://bit.ly/YN2yiY>

³ <http://bit.ly/16WUiAM>

3 Workforce engagement and consultation

- 3.1** Employee support for the creation of a public service mutual or co operative is imperative.
- 3.2** Public service delivery by mutuals and co-operatives can only work where there is genuine desire on the part of staff and where they are engaged and integral to the development of the enterprise.
- 3.3** Public service mutuals and co-operatives cannot be imposed from above or outside and evidence of workforce consultation and support must be explicit and convincing.
- 3.4** The creation of a public service mutual or co-operative should be endorsed by a majority in an open and transparent ballot of staff directly affected with a full range of options provided.
- 3.5** Recognised trade unions should be consulted and provided with a full role in the design, implementation and agreement of the workforce consultation and balloting processes and arrangements.
- 3.6** All information regarding potential transfer of services into a mutual or co operative model should be fully shared with trade unions and other key stakeholder groups
- 3.7** Where the creation of a public service mutual or co-operative is endorsed, employees and their trade union representatives should be fully involved in all aspects of the implementation, including negotiations covering staff transfers and maintenance of working conditions, with application of TUPE and adherence to national and local terms and conditions including membership of the appropriate pension schemes.
- 3.8** Stakeholder consultation and engagement, including employees and trade unions, should be at the heart of the development of the mutual or co operative. This may be a substantial process over an extended period of time and needs to be designed to represent the stakeholders involved. Where employee ownership is applicable development may be intensive and require funding, time and training to be put into place to ensure employees are empowered and fully engaged, thereby ensuring benefits of employee ownership are fully realised.

4 Governance

- 4.1** Public service mutuals and co-operatives should adhere to the International Co-operative Alliance's seven principles of co-operative identity:
- Voluntary and open membership
 - Democratic member control
 - Member economic participation
 - Autonomy and independence
 - Education, training and information
 - Co-operation among co-operatives
 - Concern for the community
- 4.2** The design of governance structures and processes should support the effective engagement of all stakeholder groups, including employee members and employee representatives, in the development and success of the entity. Based on the governance model adopted by the members this may include seats on the board or other representative bodies.
- 4.3** Membership and ownership should be open to all employees and, where relevant, service users, the community and other stakeholders.
- 4.4** There should be mechanisms in place to prevent undue influence from private investment which is counter to the principles of co-operative behaviour and the public service ethos.
- 4.5** Member communication, engagement and democratic involvement are key features of co-operative and mutual structures, linked to the core purpose of delivering member benefit. In public services this process should extend to service users, including the opportunity to be involved as members to reinforce accountability to service users and the wider community.
- 4.6** The co-operative and mutual form provides a flexible framework linked to the relevant principles and legislation to apply in relation to member types and rights, ownership and shares.
- 4.7** Where employee ownership forms a part of, or the sole, membership category, structures should be adopted to support the longer term interests of current and future employee members and their voice and participation in the enterprise. This could include holding employee shares on a collective basis using a trust or relevant legal form.
- 4.8** There are different legal models and share structures that can be used to establish a co-operative or mutual enterprise. These include the form of a co-operative or community benefit society. However in each case, the formation of the enterprises needs to be consistent with international co-operative principles, such as drawing on approved model rules where these are appropriate.
- 4.9** Employee ownership is complementary to, and not a substitute for, formalised consultation or collective bargaining procedures with recognised trade unions in the workplace.
- 4.10** Public service mutuals and co-operatives should publicly commit and adhere to the public service principles of their 'parent organisation', for example the NHS Constitution and relevant co-operative and mutual codes and principles.
- 4.11** Mutuals and co-operatives in receipt of significant public funds should support provisions to ensure that access to information for citizens in the form of Freedom of Information operates in a similar way for all public service providers, whether in private ownership, social ownership or wholly public. It is recognised that mechanisms in place to obtain relevant information should be proportionate.

5 Commissioning of services

- 5.1** Where a mutual or co-operative is to be involved in the provision of public services, this should be undertaken in a way that engages workers and service users and other relevant stakeholders in service design.
- 5.2** The design and commissioning of public services should be undertaken in such a way that protects against the take-over of services by private for-profit organisations.
- 5.3** Where procurement of services is undertaken, the explicit social and economic objectives incorporated within a mutual or co-operative model should be included within the procurement process from invitation to tender to evaluation and award.
- 5.4** Where procurement is undertaken, it should be conducted in a way that:
- is balanced against a range of criteria and prevents a narrow focus on lowest-cost procurement;
 - includes support for and development of mutual and co-operative solutions as an explicit objective to support the delivery of high quality services
 - ensures that a full range of social, economic and environmental criteria are included to provide an equitable basis for mutual, co-operative or in-house bids to compete effectively for the service
- 5.5** Where a mutual or co-operative is to be involved in the provision of a public service, the service should be awarded on a minimum five year contract in order to ensure effective and sustainable development of the organisation.
- 5.6** The commissioning authority should consult and negotiate with recognised trade unions to make clear the legal, economic and other implications for employees and all other interested parties, including TUPE and pensions commitments.
- 5.7** Consultation and negotiation should also include any expected adaptations to the delivery of services and the implications for employees and other stakeholders.
- 5.8** Outsourcing resulting from commissioning should be based on quality and adherence to public service objectives, not on the depression of workers' terms and conditions.
- 5.9** A full review of the impacts on staff, service users and related public authorities should be included within the design and commissioning process, with particular reference to equalities impacts. Results of any such review should be made publicly available and shared with recognised trade unions and stakeholders.

6 Safeguarding of assets

- 6.1** The net assets transferred from public ownership and owned by the public service mutual or co-operative should be 'asset locked' in order to ensure they continue to be used for the benefit of the community.
- 6.2** Assets should be retained within the mutual or co-operative or, in the event of contract loss or failure, transferred back to full public ownership or another body with a similar social obligation and asset lock in place.
- 6.3** The Secretary of State should use his/her powers to ensure that assets are permanently dedicated for their social and community purpose and related activities.

7 Employment standards

- 7.1** Mutuals and co-operatives providing public services should aim to operate as exemplary employers and beacons in the local economy, committed to trade union dialogue, quality employment policies and procedures, promoting equality and diversity, training and professional development for all staff and best practice in health and safety at all times.
- 7.2** Mutual and co-operative structures should enable employees to have greater engagement and involvement in the direction and decision making of the enterprise. This is complementary to recognised trade union mechanisms and agreements.
- 7.3** It is recognised that by their democratic nature co-operatives and mutuals require the ability to make decisions and set direction in the best interests of their members and stakeholders. Co-operatives and mutuals and their members may identify situations where it may be in the best interests of the entity to develop new employment solutions and practices and these should be developed through consultation and negotiation with recognised trade unions.
- 7.4** Mutuals and co-operatives providing public services should avoid seeking competitive advantage or short term efficiency gains through the depression of workforce pay, terms and conditions. Where changes are proposed, appropriate consultation and negotiation with recognised trade unions will be entered into in full including seeking alternative solutions and options.
- 7.5** Mutuals and co-operatives providing public services should adhere to or reflect common national and local terms and conditions of employment applicable in their sector of public services,
- 7.6** The transfer of employees to co-operatives and mutuals should follow good practice including TUPE provisions and the Cabinet Office 'Principles of Good Employment Practice'. There should be policies to ensure a fair and equitable treatment of all staff to help avoid a two-tier workforce.
- 7.7** All employees should be able to have access to pension provision including membership of the relevant public sector pension scheme, where its rules permit and in accordance with Fair Deal policy.
- 7.8** Any proposed harmonisation of terms and conditions should be based on the adoption of fair, sustainable and comparable terms and conditions and be fully consulted upon and negotiated with recognised trade unions.
- 7.9** Co-operatives and mutuals will work with all recognised trade unions to develop and agree arrangement for recognition status, collective bargaining arrangements, representative arrangements and facility time that reflect the new entity and relationship.

