

Alternative delivery structures for public services

Social Enterprise is a phrase used to describe one of the alternative delivery structures for the provision of public services. There is a long history within the UK (much longer than the history of provision by governmental entities in some cases) of service provision by charities, not-for-profit organisations which are not registered charities, industrial and provident societies, community interest companies and unincorporated associations. The essence of a Social Enterprise is that its surpluses are principally invested to achieve the social objectives which underpin the enterprise.

Types of social enterprise can encompass a wide variety of activities. Apart from the farming, manufacturing, wholesale and retail activities of 'The Coop', the best known social enterprises are (or used to be) Building Societies. In terms of public services, the two largest areas are Housing, and Health and Social Care.

Almshouses have been in existence for centuries, joined in the 19th and 20th centuries by 'benefaction' housing charities such as Peabody, Guinness and William Sutton. Since the 1980s the transfer of local authority housing to newly created charitable housing associations has greatly swelled the sector. In the Health sector, successive governments over the past decade have encouraged groups of NHS staff to spin out social enterprises from, broadly, 'professions ancillary to medicine'. It is estimated that the social enterprise sector in its widest sense numbers about 62,000 enterprises employing 800,000 people and contributing £24 billion to the UK economy.

With the active encouragement of the current government, all aspects of the public service are now deemed potentially suitable for spin-out as a social enterprise or 'mutual' (the terms are starting to become almost synonymous in general speech). Important defining characteristics are usually that there is an identifiable specialist service which is delivered relatively locally to a defined user group, but more general groupings of back-office services are also being considered for spin-out.

Setting up a Social Enterprise is broadly similar to setting up any other kind of company. The legal entity which is established has to be appropriate to the mission of the social enterprise and the services which it is selling back to the public sector. Getting the corporate law stuff done correctly at the outset is vitally important. The requirements of employment law in the transfer of groups of staff to the new body, and the issue of new contracts of employment, pension arrangements and staff codes have to be complied with. A full set of contract documents will be needed for the two-way relationship with the clients (public bodies) and the suppliers of good and services, including software licences and other intellectual property.

Corporate governance is often an area of work which is under-invested (in all sectors public and private). Social enterprises will often contain ambiguities in the new relationships between managers, staff, former employers and new clients. A strong, but not overbearing, structure of corporate governance should put in place health and safety policies and procedures, codes of procedure and conduct for directors, managers and staff (including compliance with new money laundering and anti-bribery legislation), and the way in which the enterprise presents itself to the wider world.



social enterprise

At Gateley we can provide services either to the Social Enterprise which is coming into being, or to the public body from which it is being spun out (we do not think it good practice for the same lawyers to act for both parties). Our legal experts in Corporate Law, Public Law, Contracts, Employment, Property, Pensions and Taxation will advise on all the detailed aspects which will require legal documentation to be in place for the launch of a successful Social Enterprise.

In addition, Gateley staff include individuals who have held the most senior positions in local and central government and the social housing sector, and who bring long experience and first hand knowledge to guide those who shoulder the arduous but exciting task of creating new social businesses.

For more information please contact one of the members of our Social Enterprises Group detailed on the separate team sheet.