



ENTERPRISE SOLUTIONS

A PRACTITIONERS' GUIDE
TO SPINNING OUT FROM
PUBLIC OWNERSHIP

RSA 2020 PUBLIC SERVICES
& TRANSITION INSTITUTE
MAY 2013

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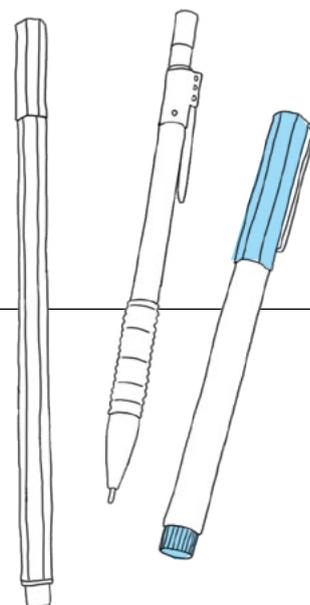




Enterprise Solutions

**A Practitioners' Guide
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Public Ownership**

Welcome to the Mutual Public Services Practitioners' Guide



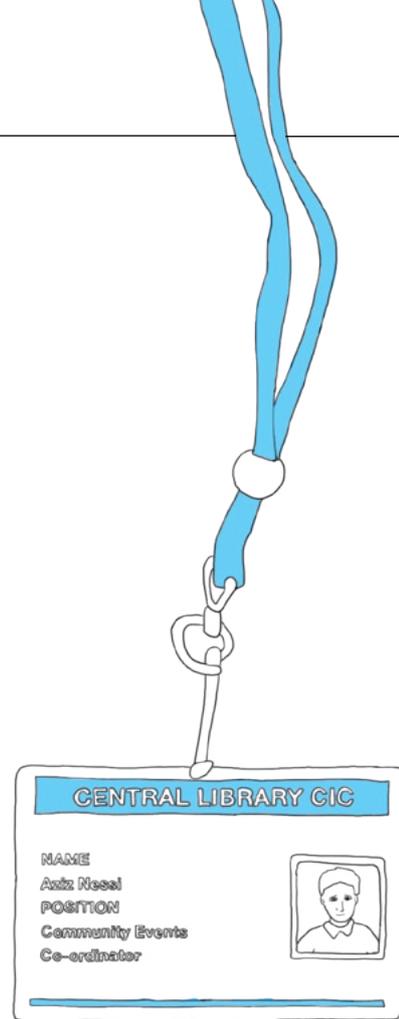
This is a guide written from the practitioners' point of view. It gives an honest, realistic and open account of what a commissioner or senior manager is likely to experience in the journey from in-house public service to spin-out mutual¹. It is based on learning from Capital Ambition's Enterprise Solutions project. The project has been led by the London Borough of Lambeth, alongside Lewisham, Kensington and Chelsea and Richmond. It has been managed by the Transition Institute and RSA 2020 Public Services.

A co-design workshop held in April 2013 enabled services to set out their experiences and the priority messages for this toolkit. It acknowledged that there are already many publications that contain comprehensive and detailed information on the technical aspects of spinning out, many of which are referred to in the section on **Useful Resources**. There was no need to recreate another document that would do the same. Nor was there a need for an additional publication to consider the policy drivers, and potential benefits and downsides of spinning out. Those too are available elsewhere, including in documents from the Enterprise Solutions project. Instead, partners identified the need for a document that provides an honest and open account of the experience of exploring mutualisation. This practitioners guide meets that need.

Except where otherwise stated, all quotations in the margins are from practitioners involved in Enterprise Solutions (Hazenberg and Hall, 2013).

1: Mutuels are organisations that "have left the public sector (also known as 'spinning out'), and continue to deliver public services, and in which employee control plays a significant role in their operation." (Mutuals Taskforce, 2012 →)

Contents



Hopes p6

Fears p8

Myths p12

Tough Choices p14

Useful Resources p16

Appendix p17

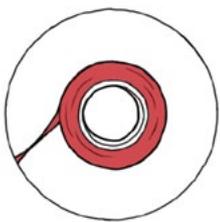
What are the hopes – the ‘pull factors’ – that make you want to spin out your service?



Hopes

‘We’ll have more control’

A common complaint of public service organisations is that they feel powerless and stifled by bureaucratic barriers. The prospect of increased freedom and flexibilities as an independent service is exciting. You will probably be freer to innovate than when you were part of a larger, more complex organisation. To a large extent, your fate will be in your hands.



“Working for the Council was one of the most frustrating jobs... there was a lot of red tape passed down from central government to local councils that really restricts people”

‘We can retain the values that brought us into public services’

Spinning out can be an opportunity to focus on what matters to you as professionals. You may feel that these values – often termed a public service ethos – have become dulled by service cuts and re-organisations in the public sector, and that they would not fit into a purely commercial set up. The values of an employee-led mutual with community representation built into its governance, resonate strongly with many former public servants.

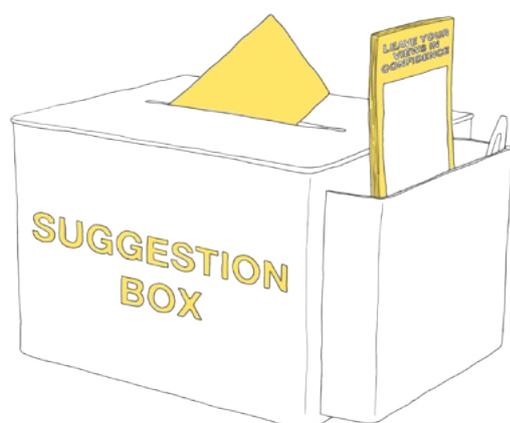
‘We can do more’

As an independent mutual you can seek out new business beyond your ‘parent’ local authority. Delivering contracts for more than one local authority may lead to efficiencies and opportunities to expand your team and take on new work that you believe has social value. If you establish yourself as a charity, you may be able to attract grants and donations that would previously have been barred to you. As a local authority service your remit was largely defined by your parent authority. You may wish to become a more diverse type of organisation, bringing together different functions and services.



‘Our service users will be more involved’

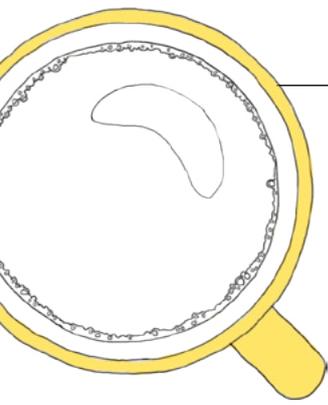
While all local authorities consult with residents and service users in the provision and delivery of their services to some extent, you may wish to go further. You can give local people or service users a stronger voice in how you are run and what you do.



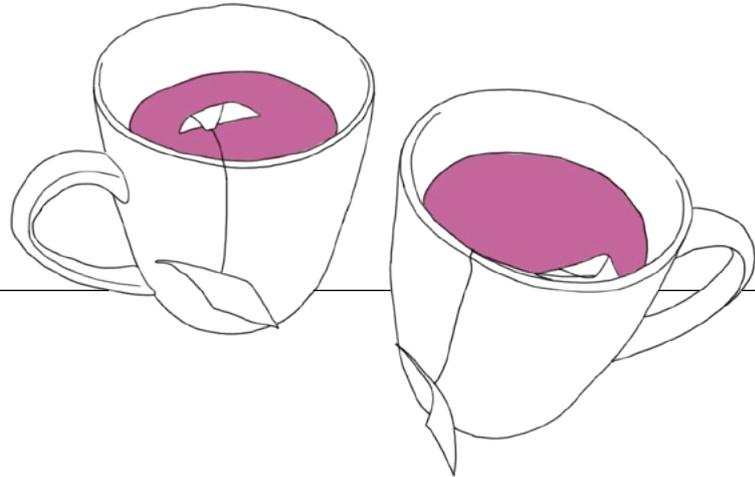
“We have had focus groups with service users and we also have two elected service users on our programme board... so that their views will be very well heard at the top of the organisation...”

‘We will be happier and more productive’

Although the evidence is not comprehensive or conclusive research suggests that productivity in a mutual is likely to be higher the greater the extent of the employee ownership (Mutuals Taskforce, 2012). Absenteeism, sickness rates and staff turnover are lower, and staff report increased commitment to their work in employee owned organisations than in organisations that are not employee owned, and this can translate into higher productivity. Staff also report greater job satisfaction.



What are the fears – the ‘push factors’ – that make you want to spin out your service?



Fears

‘We are doing this to survive’

“About 3 years ago we saw the storm clouds gathering around public spending cuts, and being non-statutory that made us particularly vulnerable.”

Be honest with yourself and your team. In many circumstances the main driver for change is the prospect of big budget cuts or being outsourced. Being clear about the drivers for change means that you can be clear in explaining how spinning-out could be a solution. For example, if the main motivation for considering spinning out is imminent funding cuts, your messages to your team and other stakeholders will clarify how the new service will be more efficient and possibly be able to access new funding.

Remember, even though anxiety may be the spur, your new service will need to develop a positive vision for itself in order to succeed.



“We are asking staff to take a very personal risk, not just professional risk.”



“Some people see it as a survival belt, but this is not the way to look at it”

'The staff won't support it'

"At first [staff reaction] was mixed... a bit of disbelief, what does this mean?"

"We are working with people who are so passionate about retaining (the service) that they are prepared to put in their time and energy into making sure that there is something there for the community"

Staff will probably feel anxious – even resentful – about the situation they face and the choices they therefore need to make. But without the staff there is no spin out. Staff need to be invested in and empowered in order to transition into a mutual. Communication is one of the main ways of doing this, so it is important to be as open as possible from the outset. Some practical ways of doing this include:

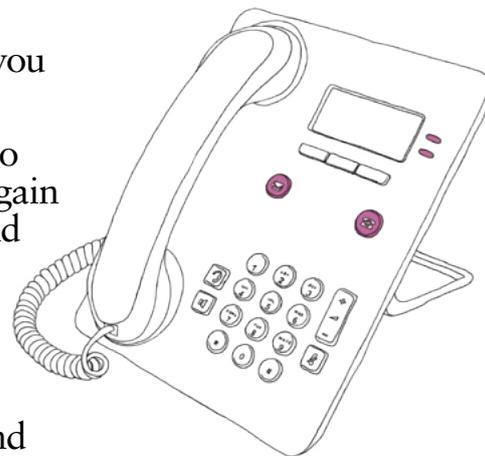
Put it in writing

Develop a brief document on what spinning out means for your staff that highlights the potential employee and community benefits. This document will reassure staff and help them to understand that while the new spin out may mean that they will have new roles, it may also provide opportunities for them to do something they have always wanted to do. It is also crucial that staff understand that developing a new organisation will not mean losing the values of the service. The document should also address how the staff will get involved in deciding whether or not to spin out, and in strategic decision making in the new organisation if it is formed. Change and governance should be based on democratic principles.

Open door, open phone, open mind

In leading this process – and it does need strong leadership – you should be patient, empathetic and responsive with your staff.

- » Be as direct and honest as possible and do not be tempted to over-sell the benefits or certainties of transition in order to gain staff favour. Be aware that some people might not agree and some may not want to spin out.
- » Be empathetic with staff; address their queries in a positive and realistic manner, without being defensive. You should prepare to address their main concern which will be about the security of their job and the continuity of their terms and conditions.
- » Ensure anonymity of staff views where needed, in order to encourage honest perspectives.
- » Be prepared to repeat assurances.
- » Keep staff up to date with developments, even though the pace of progress may be slow.
- » Depending on the size and culture of your service, use as many channels of communication as possible (e.g. social media, email, intranet, forums, notice boards, surveys, votes etc)

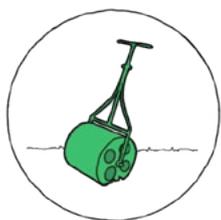


"If you are going to do this you have to be genuine and honest. You also have to be committed and believe in it"

**John Ogden, NAViGO,
Transition Institute
Case study**

'There is not enough practical support from the local authority to make this happen'

If you are a service looking to spin out of the control of a local authority, its ability and willingness to support you is crucial. It needs to invest in setting you up, and needs to commission your service going forward.



“There is no such thing as risk free procurement option, as any option can be challenged. The key is to be able to prepare the ground to be able to sustain a challenge”

Brendan O' Keefe, RBKC

Council support in setting up the new business

There are significant costs in staff time and professional advice that come with spinning out, or even exploring the potential of spinning out. These costs will have to be met. If your local authority is committed to supporting you then it should ideally develop an internal support infrastructure that will help to carry the plans forward and meet some of these costs. In engaging with your local authority, aim to get as much senior level support as possible. Maintaining a positive relationship with the local authority will be essential and it may help to negotiate some funding to start the process. For example, the Youth Services in Kensington and Chelsea were able to get some start up funding from the Council to help them with the costs of legal and business support.

Few local authorities have extensive experience of spinning out services. In practice, this means that they may struggle to provide the type of information and advice you need. You will find that your service – its costs, assets, liabilities and procedures – are embedded into Council processes in ways that are difficult to map and un-tangle. Extracting your service cleanly, accountably and fairly is complex. Your Council will need to learn new skills, and you will have to encourage it to learn them.

You should also look into pro-bono and funded support. The Cabinet Office recently announced that they have awarded a contract under the Mutuals Support Programme to deliver a bespoke development programme to leaders of public service mutuals that are in the early stages of development (Cabinet Office, 2013 →). Programmes such as these can be very useful in putting together the training and support you will need to build a mutual.



“My advice would be to make sure that you have a really strong business case that looks at the costs and the benefits to the new organisation and your organisation itself...if both sides stack up then go for it, I would”

Council attitudes to commissioning

Your Council will need to be convinced that your new organisation should be commissioned to provide the service in the future. It will also need to be convinced that it is worth investing time and resource in supporting you to spin-out as an independent provider. These are hard judgements, because the Council will be playing different roles at different times. You will need to negotiate with Council colleagues on the basis of a robust business case that stands up to scrutiny from Council officers and members, as well as the legal department and other stakeholders.

Trying to understand legal and procurement challenges is a mammoth task and is akin to learning a new language. Nevertheless, it is still important to have an understanding of the options available so that you can see which one is the right one for you. The *Procurement and Commissioning* report developed within the Enterprise Solutions project provides an overview of the options to consider in developing viable procurement models. See [Appendix A](#).

We only have one customer – the Council – so we are not really in control

Make sure that you have conversations with a variety of people that might want to commission the service, including organisations that might want to collaborate with you in new ventures. These conversations will help you to understand the demand for your service outside your ‘parent’ local authority and will help you develop a business model that includes services that would be attractive to a number of different stakeholders.



“It was like wading through treacle because nobody really seemed to have an adequate handle on what we can and can’t do... We have legal experts but they aren’t experts in this and it strikes me that there must be dozens of Councils around the country struggling with this...”





Myths

‘It is going to be a straightforward journey with a clear path’

This is a myth. The process of spinning out is not an easy one. Not everything will be a linear process i.e. first you get Council approval, then you complete your business plan etc. Instead you will find that you are working on facing different challenges simultaneously. You may have the will, eagerness and the commitment but you have to realise that political decisions and other external factors can take time and will need approval at various stages and this may wear your patience. This may also make the process take longer than you expect it to. That is why you should go into it knowing that it will be unpredictable and hard; but always have at the back of your mind the reason for why you wanted to do it. That vision will help you to keep focused and provide you a path to what you want to achieve.

“It is bloody hard and you absolutely got to be believing in it because you will encounter innumerable barriers and show stoppers and you have to be incredibly determined to get through all of those.”



'I will be working one job'

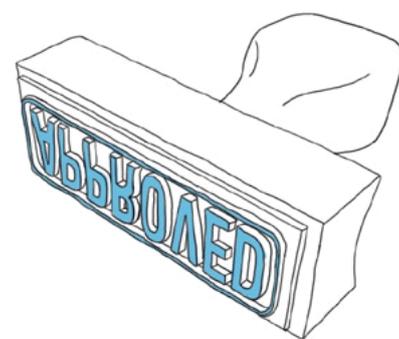
"One piece of advice I have I guess is that you should forget about your social life for a while and have a very strong sense of commitment"

Brendan O'Keefe, RBKC

This is a myth. In terms of delivering a continuity of service while managing the transition, there is more than one role to fulfil and more often than not you will find your self carrying out a variety of roles. Be prepared for this and committed to the process.

The process of spinning out demands emotional resilience. You should recognise that you will to have put a lot of energy into this. You will need to be very dedicated as you find yourself working very long hours on top of an already demanding workload.

'Our relationships with our former colleagues in our parent organisation will not fundamentally change'

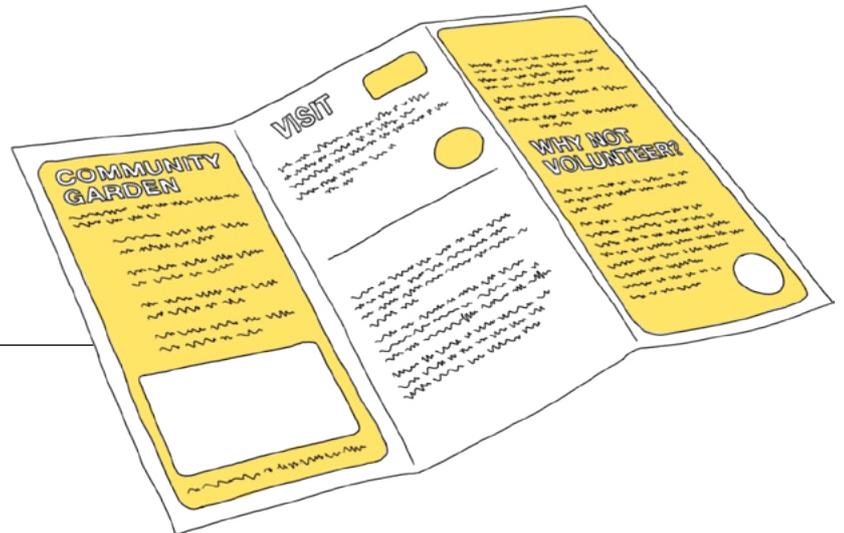


Though your parent local authority is likely to remain your most important relationship, both parties will need to establish new expectations and limits as you become an externally contracted service. You may have to expect less support for long term development and operational problem-solving; the Council may need to expect less power of direction and less access to some of your financial decisions. You should be prepared to assert your independence if necessary. The relationship should be supportive and professional, but not proprietary on the part of the Council.

'The Council faces insurmountable problems with TUPE and procurement'

As you will know from the detailed guidance available elsewhere, these barriers are not insurmountable, but you may well meet colleagues within Councils who believe otherwise. Spinning out a service is a major practical change that demands new skills and challenges the existing culture in many Councils. Make as many allies as possible. Recognise that some of the Council colleagues whose support you need to make the spin-out work may feel threatened by your move to independence and what this might mean for their role, and the role of their team (e.g. central services).

So what then are some of the key decisions that you need to make?



Tough Choices

✓ Protect the service or build a new service?

You may have been providing a good service within the local authority for a long time but it would be a mistake to believe that you can preserve this service by spinning out. Your service can only be sustainable if it uses the freedoms of mutualisation to enable innovation, based on empowered professionals having closer relationships with service users and communities. Be aware that there may be some aspects of what you have traditionally provided that will cease to be fundable. Unless you are able to construct a business plan that generates sufficient surpluses to cover these elements of your service, they will need to be discontinued. Becoming a social business means becoming more business-minded.

✓ Compete or collaborate?

Through your market research you should know which providers provide a similar service to yours and also if there is a demand for the service that you are going to provide. You can explore new and emerging opportunities e.g. in public health. You will

therefore need to be clear when and where you will be willing to compete. For example, you will need to decide whether you would be comfortable competing against in-house public service providers for contracts. However, also remember that even in competitive markets organisations form partnerships and alliances. Be open to these. Many local authority services and other public services have made notable progress in recent years in integrating their provision around people's needs. It is important that you maintain relationships with other service providers that enable you to keep putting citizens' needs first.

✓ Demonstrate decisive leadership or reach out for a wider mandate?

Successful spinning out often requires drive and leadership from senior managers. However, spin outs that go on to generate social value take practical steps to share power and authority with communities and service users, as well as staff. Think about giving a broad definition to your service users. For instance, if you are providing a youth service then think about including parents in your service users group to find out what they need from you.

✓ Develop the skills of the current team, or bring in new people?

An independent mutual needs a different mix of skills than a service within a Council. You may be able to discover and develop some of the necessary new skills, but you may also have to move people out and get new people in. This could be painful. Honour the spirit and letter of TUPE arrangements, but don't promise that things won't change.



“The fact is if there is a will for these things to happen then they can happen. If the overriding priority is that we want to see a slimmer, leaner Council then it could happen”

The aim for this toolkit has been to provide you with a readable and honest account of some of exciting, daunting and rewarding challenges that you will encounter as you consider the option of setting up a public service mutual.

The journey is hard and requires commitment, alliance building and above all a strong vision of a unique service that staff, service users and the Council will all value.

Useful Resources

Cabinet Office (2012) *Commissioner Support Toolbox* →

Cabinet Office (2013) *Mutual Development Programme: delivering mutual success* →

Co-operatives UK and Mutual Ventures (2011) *Co-operative Business District 1–4: a guided journey to discover your own public service co-operative destination*. Manchester: Co-operatives UK →

Dearden-Phillips, C. and Griffith, M. (2010) *How to Step Out: your guide to leading a Social Enterprise spin-out from the public sector*. Bury St Edmunds: Stepping Out; →

Hazenbergh, R. and Hall, K. (2013) *Enterprise Solutions: barriers and solutions to public sector spin-out*. London: RSA 2020 Public Services

Mutuals Taskforce (2011) *Our Mutual Friends: making the case for public service mutuals*. London: Cabinet Office; →

Mutuals Taskforce (2012) *Public Service Mutuals: the next steps*. London: Cabinet Office; →

Social Enterprise Coalition (2011), *The Right to Run: a practical guide for public sector staff thinking about setting up a mutual or a social enterprise*. London: Social Enterprise Coalition; →

Transition Institute (2012), *Case Study Interviews with spin-outs*; →

Transition Institute (2013) *Scaling Up Your Business: expansion plans for spin outs*. London: Transition Institute; →

Transition Institute and TPP Law (2012) *Legal Dilemmas*. London: Transition Institute; →

Appendix A

Excerpt from Capital Ambition Action Learning Set on Procurement and Commissioning

Brendan O’Keefe, Head of Services to Young People at the Royal Borough of Kensington and Chelsea provided a comprehensive overview of the different options for developing viable procurement models. The options for procuring the Youth Support and Development Service Employee Led Mutual (YSDS-ELM) were as follows:

- a. Competitively tender the service at point of spin-out: Within this option the Council would tender the contract for the service through a competitive tender, however this would mean that the contract could be challenged by other interested companies. It would be restricting the market and opening it up for challenge. The other issue is that there is a professional risk, staff will be unsure if they will be able to keep their jobs if it is a competitive tender and so it will be difficult to get staff buy in for the process.
- b. Seek a Partner for a Joint Venture and place the Competition on the JV: Partnering in a Joint Venture with another business is an option that would help to smooth the transition. The joint venture would be tendering for the contract. This was a serious option but YSDS-ELM did not want to be subsumed within a larger organisation. They wanted to be independent and create something new and so they decided against this option but might consider it as an option at a later stage. It is also true that the rules that relate to public sector bodies entering into joint ventures are very complex and will need to be examined if this is the option that is chosen.
- c. The Council Uses General Powers to award an uncontested contract: The Localism Bill is designed to strengthen the General Powers that the Council can use to award an uncontested contract. To qualify under general powers, the spin out would have to demonstrate its contribution to community well-being and because it is untested YSDS-ELM felt that it would open them up for challenge.
- d. The Council Enters into a Negotiated agreement to award an uncontested contract: this is the option that the YSDS-ELM has chosen, but is not meant to be the option that every spin-out should choose, as it may not be fit for purpose. The YSDS-ELM service is a Part B service (which includes educational or leisure oriented activities) and you do not have to advertise in the EU etc. It is exempt from some EU Directives but you have some protection. The Council will negotiate an agreement to award an uncontested contract, around 3+2 years, allowing the spin-out some years of stability to position itself in the market. It has the advantages of a stable framework, but the benefits of being allowed to trade outside its administrative boundaries.
- e. The Council Claims a Teckal exemption to award an uncontested contract: Teckal allows for a local authority to create a subsidiary enterprise within its own orbit so a new organisation can be created but it would remain a subsidiary of the Council. So it does not have complete independence and there are some restrictions particularly around trading outside of your local authority. As this was going to restrict the business ambitions of YSDS-ELM, they decided to not go with this option. Also organisations protected by Teckal, stay in the Councils balance sheet and so they cannot be fully employee owned. This might be right for other entities but it was not for YSDS-ELM.
- f. The ELM is established under Teckal for a temporary period before spinning out: It is contemplated as a last resort option. It gives the organisation some stability for planning out their spin out properly, but they do not have the option of trading as an enterprise.
- g. The Council provides a grant fund to the ELM. In this case the Council provides a direct fund to the ELM, however, their main trouble is the VAT requirements and trading limitations, can endanger the long term sustainability of the project.

London Councils' Capital Ambition was established in 2008 as London's improvement and efficiency partnership to direct £40 million to help London's local authorities deliver improved performance, efficiencies and savings to support innovative ways of working. Through funding from the London Councils' Capital Ambition programme, local authority-led projects across the capital have achieved cashable savings of more than £76 million and are on track to deliver savings of £357 million by March 2016. Governance of London Councils' Capital Ambition was agreed by the London Councils Leaders' Committee and the current programme is led by a cross-party board of elected members from five boroughs. The board has responsibilities for decision-making around the use of the programme's resources and for the oversight of the programme's delivery.

RSA 2020 Public Services is a practice-research and policy development hub. We work with local authorities, public sector bodies, businesses and the third sector to develop social productivity approaches to public service reform, helping to create stronger and more resilient citizens and communities.

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