

June 2012

1. Introduction

1.1 Community Right to Challenge

The Government's Localism Act introduces a 'Community Right to Challenge' which is due to come into effect from 27 June 2012. This right enables voluntary and community bodies, charities, parish councils and employees of local authorities to submit an 'Expression of Interest' to bid in a procurement exercise to take over responsibility for providing services that local authorities currently provide. From 27 June 2012, KCC will set out a timetable of expression of interest windows for each service during which expressions of interest can be submitted. This information will be held in an Expression of Interest Register on KCC's website along with further information about the process - www.kent.gov.uk/community_and_living/right_to_challenge.aspx.

1.2 Social Enterprises

The Government has also expressed its commitment, under the 'Right to Provide', to the creation and expansion of employee-led social enterprises including mutuals and co-operatives which enable public sector workers the opportunity to 'spin out' from KCC and take over the running of the services they deliver. The Community Right to Challenge process will be used to manage any 'Right to Provide' submissions from staff.

The statutory guidance for Community Right to Challenge provides protection for discussions between staff and KCC about spinning out services to carry on uninterrupted by other challenges. If a group of staff (2 or more employees) puts forward a proposal to KCC to spin out and run their service and KCC is considering this proposal, KCC is allowed to reject any other challenges for that service from other organisations while discussions are underway.

1.3 This document

This document is intended to provide information and guidance to managers in dealing with issues which could potentially arise when staff are involved in a proposal to establish a social enterprise to take over the running of a KCC service. Any issues that arise should be addressed with the individuals concerned via normal management practices and, where necessary, in accordance with existing policies and procedures.

2. 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.' Social enterprises can take on a number of different structures:

- **Charities that trade**
- **Community Interest Companies**
- **Mutuals**
- **Co-operatives**

Government is particularly interested in the development of Mutuals. Mutuals are formed when public sector employees spin out of the Local Authority but continue to provide the service. In a mutual the employees own a significant stake of the business and have significant control over its running. For further information, see the Mutuals Information Service provided by the Cabinet Office: <http://mutuals.cabinetoffice.gov.uk/>

3. KCC's position on Social Enterprises

In accordance with Bold Steps for Kent, KCC is committed to the principle of residents, community bodies and members of staff having the opportunity to submit proposals in respect of establishing a social enterprise to deliver services to the people of Kent. The decision to create or 'spin out' services into a social enterprise model ultimately rests with KCC. In reaching a decision on this matter, KCC will take into account value for money, best value (including social, economic & environmental value) and the best way to improve outcomes for service users and communities in making that decision.

The Community Right to Challenge provides a process by which groups of two or more employees can submit an expression of interest to form a social enterprise. However, groups of staff can also approach Commissioning & Procurement Board directly to discuss their proposal, and the Board should be informed in advance of any forthcoming expressions of interest from groups of staff. The Q&A below provides further guidance.

4. Further information

There are detailed briefing notes available from the Policy & Strategic Relationships Team in Business Strategy on:

- Community Right to Challenge - process and policy implications
- KCC's approach to Community Right to Challenge
- Social Enterprise models and legal entities

Contact jenny.dixon-sherreard@kent.gov.uk

The Community Right to Challenge section of KCC's website also provides links to useful guidance: www.kent.gov.uk/community_and_living/right_to_challenge.aspx.

Social Enterprises: Guidance for Employees (this document also includes information on some of the key people management issues that should be taken into account by staff who are involved in proposals to create a social enterprise).

Questions & Answers

Some members of staff have advised me that they are interested in establishing a social enterprise to take over the running of our team/service. What action do I need to take in response to this?

In order to obtain a clearer understanding of the potential impact of the social enterprise on the team/service and the staff group - including your own role - you should meet with the staff involved so that they provide you with further information about their proposal.

You should also advise the staff that, in respect of the social enterprise proposal, it is not appropriate for them to make any contact with service users, other stakeholders or elected Members without your prior agreement.

Following your initial discussion with the staff involved in the social enterprise you will need to contact KCC's Commissioning & Procurement Board to advise them of the staff proposal. The Commissioning & Procurement Board will consider all staff proposals to develop a social enterprise and formal Expressions of Interest submitted under the Right to Challenge. Managers should contact the Commissioning & Procurement Board via Henry Swan – Head of Procurement.

Staff have requested to hold a meeting with the whole team/service in order to discuss the proposal to establish a social enterprise. Is this appropriate?

Yes. It will be important for staff to meet with the whole team at an early stage in the process of seeking to establish a social enterprise. Although staff may not have produced a formal expression of interest document at the time of meeting, the information about the proposal that is shared with the whole team should identify the potential implications - including employment matters - of establishing a social enterprise. One of the requirements of an expression of interest is that it must explain how other employees who are affected by the proposal will be engaged, and KCC must be satisfied with the engagement, so it is important to get this right from the start.

It is suggested that, as a means of facilitating a discussion on the principle of establishing a social enterprise, the proposal from staff should be included as an agenda item at a regular team meeting. The statutory guidance is not prescriptive about how employee engagement should be carried out and suggests that normal, proportionate engagement mechanisms are used.

To what extent do I need to have involvement in the team meeting discussion about the social enterprise proposal?

At the end of the team meeting discussion, it will be beneficial for you to check with the staff that, based on the information provided to them, they are aware and understand the key issues relating to their role. It will also be important for you as a manager to establish the possible impact that the proposed social enterprise will have on your role. As further details are developed on the proposal, matters such as the likely legal structure for the social enterprise, the key requirements of the Transfer of Undertakings Protection of Employment (TUPE) regulations and future pension arrangements must be communicated to and understood by staff.

During the team meeting discussion all members of staff in the service/unit must have the opportunity to express their views and opinions on the principle of setting up a social enterprise. The viewpoints of all staff must be fully respected and it is not acceptable for individuals to feel that they have been pressurised into giving support to the social enterprise proposal.

What action do I need to take if, as a result of the discussion at the meeting, there is some degree of disagreement in the staff group regarding the proposal to establish a social enterprise?

For the members of staff who are seeking to establish a social enterprise, gaining support from the people directly affected by the proposal is an important consideration. As the Right to Challenge only requires the involvement of two or more members of staff and the secondary regulations state that a ballot to show support is not necessary, a lack of clear support from the entire team for the principle of establishing a social enterprise is not an obstacle to the proposal progressing further. However, as above, there is a requirement for affected staff to have been sufficiently engaged, and the

greater the employee support, the more chance the social enterprise has of being successful.

As with any other matters where there are divergent views within the staff group, it is acceptable for robust debate to take place regarding the social enterprise proposal. In view of the employment implications for staff arising from a successful Right to Challenge bid - not least the transfer from KCC to a new employer - there is the potential for the social enterprise proposal to become a contentious issue.

Any disputes that arise relating to the principle of establishing a social enterprise should be managed in the normal manner through appropriate management action. If disputes persist and involve conduct issues these may need to be addressed via the Disciplinary Procedure. Please contact HR if you require further advice and guidance on addressing this matter.

Staff have requested to hold further meetings related to the social enterprise during normal working hours. Is this appropriate and do I have to agree to their request(s)?

As a general rule, and to avoid any potential detrimental impact on the day to day duties of the members of staff, meetings relating to the social enterprise should not be held during normal working hours. However, you have discretion in responding to requests from staff. In order to assist you in assessing the appropriateness of the request you should establish the reasons why the meeting cannot be held outside of normal working hours. This information will enable you to identify any potential adverse effects on service delivery that could arise if the request is agreed. When considering the requests you should also take into account possible equality issues, such as child and other caring arrangements, which may present difficulties for staff in holding a meeting outside of normal working hours.

If you are able to agree to the request the staff involved will be required to make up the time lost due to attendance at the meeting.

Are staff allowed to carry out work and activities relating to the social enterprise during their normal working time?

As a general rule, and to avoid any potential detrimental impact on the day to day duties of the members of staff, work connected to the social enterprise proposal should not be carried out during normal working hours. However, you have the discretion to agree requests from members of staff if you are satisfied that there is an urgent need for a particular task or activity to be completed and this cannot be undertaken outside of normal working hours. If you are able to agree to the request, the staff involved will be required to make up the lost time at a later date.

Staff have advised me that they want to contact service users and/or other stakeholders to discuss the social enterprise proposal. Is this appropriate?

Yes. Early engagement with service users and other stakeholders is an important element in the process of developing a social enterprise proposal. You will need to advise the members of staff involved in the social enterprise proposal that, before any communication takes place service users and stakeholders, they must seek guidance from the Communications & Engagement Team (Customer & Communities). In order to do this they will need to complete a work request form on KNet:

<http://knet/Change/Pages/Communications-Consultation-and-Customers-.aspx>

In addition to contacting the Communications & Engagement Team, the staff involved in the social enterprise proposal should inform you of the information that they intend to share with the service users and stakeholders.

A suggested approach for managing the initial communication with service users and stakeholders is to produce a joint letter from management and the staff involved the social enterprise proposal. From KCC's perspective the written communication should seek to reassure service users and stakeholders that, although there is proposal being developed by staff for a social enterprise, there will be no immediate changes to service provision. The letter should also give an outline of the process that will be followed by KCC in respect of dealing with a formal Right to Challenge Expression of Interest. This information must emphasise that all bids to take over the running of the service will be thoroughly examined and will take into account the best way to improve outcomes for service users and communities. The Communication & Engagement Team should be contacted via a work request form in order for them to provide advice and guidance on this matter.

Staff must not approach elected Members directly to discuss the proposed social enterprise. However, as identified in the Kent Code, every assistance should be given to elected Members who need information about the proposed social enterprise to deal with matters such as media enquiries. Corporate Communications can provide further guidance regarding the protocols for the provision of information to elected Members.

It is important to make sure any engagement activities relating to the social enterprise proposal do not conflict with other work being carried out at the same time in the service (including other consultation or review activity).

As part of the approach to communicating with key parties about the social enterprise proposal, staff will need to engage at the earliest appropriate opportunity with the recognised Trade Unions (UNISON, GMB and Unite) and any other relevant Trade Unions.

Is there anything else that I need to advise staff in connection to them communicating with service users and other stakeholders about the social enterprise proposal?

When staff are communicating with service users or other stakeholders regarding the social enterprise proposal they must make it clear that they are not acting in their capacity as a KCC employee.

It is not acceptable for service users and other stakeholders to feel that they are being pressurised into giving their support to the proposed social enterprise. Complaints on this matter will need be appropriately investigated and, if upheld, may result in disciplinary action being taken against the staff involved.

You will need to advise staff that any communication (written and verbal) that takes place with service users and other stakeholders regarding the proposed social enterprise must not include any comments or statements which could be regarded as derogatory or inappropriate in respect of the service currently being provided by KCC. Staff need to be made aware that inappropriate communication may also result in disciplinary action being taken.

If issues or concerns are brought to your attention regarding communication between staff and service users/other stakeholders you should conduct a preliminary investigation to seek further information. Depending on the outcome of the preliminary investigation, it may be necessary for a formal investigation to be carried out in accordance with the KCC Disciplinary Procedure.

When staff are carrying out work on their social enterprise proposal are they able to access information which is owned and held by KCC?

Yes. However, in order to ensure compliance with the data protection principles set in the Data Protection Act 1998, staff must seek your permission before accessing or using data which is owned and held by KCC. The members of staff involved in the social enterprise proposal will need to explain to you the reasons for their request. As the information that KCC holds on service users has been collected for specific identified reasons it can only be used with the consent of the individuals concerned – this is particularly important if an external organisation has involvement in the proposed social enterprise.

Further information regarding disclosure of information is set out in The Kent Code <http://knet2/staff-zone/terms-and-conditions/managing-performance-and-conduct/The%20Kent%20Code.doc>

What should I do if I suspect that KCC held data has been misused by members of staff involved in the social enterprise proposal?

Misuse or inappropriate use of information and/or personal data is regarded as a serious matter. In the first instance you will need to conduct a preliminary investigation to establish whether there is evidence to support that data may have been misused. Depending on the information obtained from the preliminary investigation, and the nature of the data misuse, it may be possible to address this matter through appropriate management action. However, the data misuse issue may require a formal investigation in accordance with the KCC Disciplinary Procedure. Please contact HR for further advice and guidance on dealing with data misuse issues.

What KCC resources are staff able to use in connection with their involvement in the social enterprise proposal?

Resources, such as KCC's telephone, computer systems, other equipment and materials (including stationery items), should not be used for work connected to the proposed social enterprise. However, as identified in the Electronic Communications User Guidance, some limited personal use of KCC's electronic communication facilities and devices (including phone, internet and e-mail) is permitted. Personal use by staff of KCC resources must not be excessive and should take place during work breaks where it will not interfere with the performance of their day to day duties.

If you have concerns regarding staff making excessive use of KCC resources this is matter that may be resolved through appropriate informal management action. However, if the personal usage is particularly excessive or the issue persists, this matter may need to be investigated formally in accordance with the KCC Disciplinary Procedure.

Further information on the use of KCC resources can be found in the K-NET document 'Electronic Communications User Guidance: Using your electronic equipment responsibly'. <http://knet2/kcc-directory/services-and-support/it-service-desk/help-and->

[advice/Electronic%20Communication%20User%20Guidance%20June%202010%20-%20using%20your%20electronic%20equipment%20responsibly.doc](#)