

Consultation on the future definition of public service mutuals

Response sheet

About This Consultation

To:

We welcome responses to this consultation from public service mutuals, social enterprises, and those involved with public sector commissioning.

Duration:

18 July 2019 to 30 September 2019

How to respond:

Please send responses to mutuals@culture.gov.uk by 9.00am on 30 September 2019.

This response is provided by the Association of Financial Mutuals, the trade body that supports friendly societies, mutual insurers and not-for-profit healthcare providers in the UK.

Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £19.6 billion, and employ nearly 30,000 staff, and are all regulated and authorised by the FCA, and most by PRA. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion.

1. Origins:

1a) Do you agree to removing the requirement for mutuals to have originated in the public sector?

YES

Please delete as appropriate.

1b) Please provide further information to support your response.

We think the current definition provides an unnecessary obstacle to organisations that operate as a 'mutual' (in the sense used in the consultation). Enabling new or existing employee-led organisations to play a role in public sector delivery will further enhance the reputation of public sector mutuals, and broaden the provision of services, as long as there are clear criteria in place to ensure the mutual meets all other criteria.

2. Employee influence

2a) Do you agree with tightening the requirements on employee influence in line with the below?

The following minimum requirements to be codified in the articles of association or governing documents:

- Direct staff ownership - using tax advantaged share plans, employees become registered individual shareholders of a majority of the shares in the company, or;
- Indirect staff ownership - shares are held collectively on behalf of employees, normally through an employee trust;

Or two or more of the following:

- Elected staff to the Board of Directors
- Staff and/or member voting rights
- Formalised staff forum with direct links to the Board

YES

Please delete as appropriate.

2b) Please suggest any changes you'd make to the requirements above.

We are concerned that currently the absence of clear definition has led to a multitude of approaches, many of which would not be recognised as mutual, or employee-led. The proposed definition adds more clarity to this, though we are not convinced that the avoidance of a formal solution addresses the issue satisfactorily, and means there is a risk some public sector mutuals lack the formal structures needed to deliver 'significant employee influence or control'.

The alternatives to staff ownership appear to offer a great deal of discretion: we agree with the option of staff appointments to the Board and voting rights, but do not consider that a staff forum, in isolation of any formal direct staff ownership offers the right incentives for management to prioritise the interests of staff/ members.

2c) Please provide further information to support your response.

A mutual needs to be accountable to its owners in the same way as any other organisation. That accountability can be effectively achieved by making owners (staff) shareholders, or giving them formal opportunities to be elected to, or approve, the Board. However formal a staff forum might be, it cannot hold the Board to account.

3. Mission and Profit

3a) Do you agree to replace must 'deliver public services', with must have 'a clear social mission outlined in their governing documents'?

NO

Please delete as appropriate.

3b) Please provide further information to support your response.

We consider there is a risk that if there is no longer a requirement for a 'public sector mutual' to continue to 'deliver public services', then the purpose of the organisation would become blurred, not just between it and other public sector service providers, but between public sector mutuals and traditional mutuals, or indeed non-mutual service providers.

To illustrate, in recent times we have seen the creation of member-owned mutuals which have been formed by public sector service providers; this includes Education Mutual and Local Government Mutual, created by schools and councils respectively, to better serve the needs of the sector. These organisations are authorised by the FCA and have formal regulatory obligations which public sector mutuals do not have, and we would be concerned that the government approaches risk confusing consumers on the status of organisations, and creates a reputational risk to member-owned mutuals.

Hence whilst we agree that a clear social purpose should be a requirement for a public sector mutual, we also consider that it must continue to deliver public services.

3c) 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?

YES

Please delete as appropriate.

3d) Please provide further information to support your response.

We consider that an organisation that did not do this could not call itself a mutual. Indeed, members of AFM reinvest 100% of their profits for the benefits of their customers, the trade they represent or their core purpose.

3e) Do the proposals outlined in section 3 limit the potential for investment in the mutuals sector?

NO

Please delete as appropriate.

3f) Please provide further information to support your response.

Our experience of the opportunities for mutuals to raise capital is that being mutually owned is not in itself a reason for stifling investment. Many public sector mutuals are large businesses, and would benefit from the capacity to attract external funding. We think public sector mutuals should be attractive to potential investors, both in terms of their scale and potential, but also in terms of the underwriting of demand for their services from government.

Our experience of seeking to develop Mutuals' Deferred Shares with Treasury was that investors perceive well-run mutuals as attractive, and are not discouraged from investing by a social mission and the expectation that the majority of profits are reinvested. The nature of the investment, and the nature of any dividend/ interest payment are the key criteria alongside future clarity from government on the demand for services.

In this respect therefore we see the retention of a purpose set of delivering public services is an important element of future appeal, and diluting this would risk making the mutual less attractive to prospective investors.

4. Independence & Ownership

4a) 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.

YES

Please delete as appropriate.

4b) Do you think there any other mechanisms should be implemented to future-proof the character of a public service mutual?

YES

Please delete as appropriate.

4c) Please provide further information to support your response.

We consider a threshold of 51% is inadequate. In our experience of financial services, a member-owned mutual where nearly half of the business was owned externally would be at risk of hostile takeover or undue influence of actions that might undermine the social purpose.

Where the creation of value is typically much more long-term in a mutual than in a non-mutual, the constant calibration of a threshold just over 51% would be difficult to manage and maintain.

Historically, organisations where government maintains a golden share have proved difficult to manage or to maintain confidence. Having a mutual which is 49% externally controlled, whether by government or private sector, would be perceived to be less trustworthy on the one hand, and benefiting from anti-competitive support on the other.

5. Formal recognition and naming convention

5a) Do you think that the proposals outlined in this consultation could alleviate the confusion currently experienced by commissioners around public service mutuals?

NO

Please delete as appropriate.

5b) Do you think the government should consider adding a strapline of “staff-led social enterprises”?

YES

Please delete as appropriate.

5c) Please provide further information to support your responses.

It is not clear to what extent the confusion by commissioners is legitimate, but it is just as likely to be borne out of political bias or a deeply held mistrust of anything that isn't state-owned as it is a confusion over terminology. Hence, whilst further definitions and straplines will do no harm, they may not address the underlying prejudice. We think that wider government communication would be beneficial, including education on the role of mutuals within the public sector, and possibility incorporating into future audit work a requirement to review commissioning to ensure mutuals are given a fair opportunity to compete for public services.

500 words

5d) Do you think that a formal accreditation for public service mutuals is necessary to uphold the newly created definition?

YES

Please delete as appropriate.

5e) Please provide further information to support your response, particularly in terms of how an industry-led accreditation could function.

We think that some form of accreditation is vital, to be able to demonstrate that a mutual is run in a way that delivers good public outcomes, and is consistent with their stated purpose. We consider this includes a form of commitment to corporate governance good practice: members of AFM adopt our Code in order to provide a demonstration of high standards, and as a basis for having an effective dialogue with stakeholders; see: <https://www.financialmutuals.org/governance/our-governance-code/>.