

## Local Government mutual spin-out: 3BM update July 2013

### Background – pre mutual

We first case studied the 3BM spin-out in summer 2012. The team comprised 40 staff working at the time across three local authorities (the London Borough's of Hammersmith and Fulham, Westminster, and Kensington and Chelsea) and 190 local schools. Services provided include financial management and budget planning, IT support, building development project management and delivery and strategic advice to councils.

The idea of a mutual was first floated in 2010 within the context of reduced public sector finances, budgets for school support moving directly into the hands of schools and political interest in new public service delivery models. Alongside this in early 2011 the tri-borough arrangement was announced adding to the case for a three borough school support mutual (3BM) to pool expertise and achieve economies of scale.

In August 2010 the service became one of twelve 'public service mutual pathfinders' to receive support through the Cabinet Office Mutual Support Programme. On the 8<sup>th</sup> April 2013, after a two year transition, 3BM signed the service contract with the council. On the 10<sup>th</sup> April 2013 they completed their transition and went 'live' at a launch attended by Nick Hurd MP, Minister for Civil Society.

### Spin-out/transition process

#### Feasibility and options appraisal

The case for a mutual focused on the need to make savings whilst protecting the quality of the non-statutory services being provided. The team hoped to use their independence to extend their existing service offers to new customers (traded services to schools already accounted for approximately two thirds of the teams' £2million turnover) and to develop and diversify services. Spinning out also reduced council liabilities and offered the chance to engage staff in the future of the service.

Employees were closely involved from an early stage and the proposal was supported by senior officers and politicians. Staff tested the concept of a mutual with schools who were supportive of the proposal. The Council developed a five stage process comprising: expression of interest; options appraisal; business planning; transition and post transition. Decision-making processes and milestones were factored in, an internal project board was set up and the council appointed a project manager to support (and test) the process.

#### Ownership and governance

The team spinning out were committed to the development of a staff-led mutual but wanted to strengthen their offer; after discussion the team decided to procure an independent sector partner and establish a mutual joint venture (Mutual JV). The partner would share skills, experience and business acumen and support change management, growth and marketing. After soft market testing, the council established the following process: OJEU notice; extended PQQ; shortlist; dialogue and business planning; competitive dialogue and negotiations; final offer. The team held a well-attended 'meet the buyer' event in January 2012 after which many different types of organisation submitted a bid - from large educational organisations to specialist mutual partnerships. Five bidders got through the first stage of competitive dialogue, filtered down to three in the second. After just under a year a final decision was reached and Prospects were chosen as the joint venture partner.

The legal model is based around a trading employee-led mutual (3BM) which is established as a company limited by shares. At least 75.1% of these shares must be held by employees; to enable this the 3BM Trustee Company has been established as a company limited by guarantee. This will hold and manage these shares for the benefit of employees. The independent sector partner in the joint venture (Prospects) may acquire up to 24.9% of the company shares subject to them meeting key performance targets. The partner is remunerated for their contributions through this minority shareholding arrangement.

The board of the 3BM trading company comprises the managing director, a non-executive chairman, a finance director, a non-executive representative of Prospects as the independent sector partner and an employee committee representative. The executive management team at 3BM have the freedom to manage the business with major issues for example proposals which represent a new strategic direction or are high risk, put to staff as shareholders on a one person one vote basis through the Trustee company. There is also an employee committee which ensures the voice of staff can be heard on all issues.

### **TUPE and pensions**

All staff were TUPE transferred to the new mutual with any new staff placed on temporary contracts during the transition period. Staff were employed by all three of the council's involved in the spin-out bringing added complexity to the TUPE process. This was dealt with in two stages with Kensington & Chelsea and Westminster first TUPE transferring staff to Hammersmith and Fulham, before all staff were TUPE'd to the mutual. All staff groups offered slightly different services and thus terms and conditions did not need to be formerly aligned but 3BM have done what they can to harmonise them.

Pensions proved a challenging issue - the emerging mutual applied to the Local Government Pension Scheme (LGPS) to obtain Admitted Body Status. Despite tackling pension arrangements from the outset, approval to join the LGPS was slow to obtain. The rules surrounding local government pensions changed in 2012 which slowed progress. Pension arrangements were still being completed right up to the end of the transition:

*Trying to get Admitted Body Status knocked us back 2-3 months and the rules changed in Autumn 2012. External legal advice suggested the council write to the Secretary of State...[the rule change] took everyone by surprise...because 3BM work [across multiple boroughs] there was a suggestion they might need a new agreement for each local authority...so write to write to the Secretary of State for special dispensation.*

Andy Ruane, Procurement Project Manager, London Borough of Hammersmith and Fulham

### **Procurement, contracts and assets**

The services were judged to include Part A services requiring a competitive tendering process, thus there were two strands to the procurement processes. The procurement of an independent sector partner to deliver the council services contract. Procuring an independent sector partner for a mutual joint venture was resource intensive and also quite unique and innovative procurement strategies were needed. The market responded well to the opportunity and most understood what the council and 3BM were trying to do and understood the stake they would have in the future mutual joint venture., although further into the process some bidders found it hard to get sign off from their boards:

*The partner would only be a minority shareholder but the market got that and ran with it. Towards the end it did happen that a couple of pulled out quite late as commercially they couldn't get sign off from their Boards who didn't quite get it...Always the most important*

*thing from the council perspective was this being a staff led and run organisation, that's why [the independent sector partner] shareholding cannot be more than 24.9 %...at the end of the day this didn't sit comfortably with [all bidders] boards but this was not for negotiation.*

Andy Ruane, Procurement Project Manager, London Borough of Hammersmith and Fulham

The council wanted to make sure the spin-out would remain a mutual over time which meant they wanted to be satisfied with the principles of the shareholding agreement before any service contracts were signed:

*This is only for the mutual really, but we needed to see it too as we weren't ever that involved in the details of the shareholding agreement - that is more the mutual's business than the councils but the council needed to make sure it is an employee-led mutual [and won't] just become another outsourcing.*

Lucy Vaughn, Corporate Transformation, London Borough of Hammersmith and Fulham

The end of the procurement and contract negotiation processes were particularly tricky as the transition teams sought to pull the needs and the views of the staff from the spin-out team, the three councils and the independent sector partner together and reflect them in the final contracts:

*When three sets of lawyers are looking at documents they are always going to have a slightly different take on each. This made it difficult and added time and frustration as we all wanted the mutual to be live. We all had the same goal, but it was hard to get the eleventh hour last minute things completed.*

Andy Rennison, Managing Director, 3BM

The mutual was given a small start-up loan by the council to be paid back within three months and awarded an initial four year contract which will be monitored. The size of the local authority contract is likely to reduce over time and the mutual will need to plug this gap by expanding its traded services - it is anticipated the tri-borough councils will make significant savings through the mutual.

Alongside these procurement processes, the mutual worked hard to get ready for life as an independent company organising hardware, ICT licenses, HR and finance arrangements. Despite having internal expertise in ICT the spin-out team were caught out by ICT licensing arrangements; the council had agreed to transfer some of the old hardware to the mutual, but the spin-out team discovered they couldn't then transfer the licenses for the software. Once they purchased new software they needed to upgrade their hardware to operate it. Setting up a business bank account was also a challenge as many banks did not understand the ownership model. Whilst all of these challenges were eventually overcome, they all stretched the timescales for the transition:

*I always felt we were a week late with everything...but maybe this was just my expectations; they are definitely tempered now! I advise anyone going through it, don't expect anything to go smoothly.*

Andy Rennison, Managing Director, 3BM

## Post transition

### Growth of the model

The mutual are working hard to develop and embed their ownership and governance model. The 3BM Trust holds and manages staff shares; it comprises management and employee representation and is chaired by an independent non-executive. Patrick Lewis, Director of Partnership Services for John Lewis, has just been appointed to this role and will be Non-Executive Chair of Trustees for 3BM. The governance structure developed on paper is being brought to life; elections for employee representatives on the employee committee are just closing and there is a staff away day planned for July. The team want to realise the potential benefits of the ownership model:

*We are on a journey now to embed mutualisation and employee ownership, to empower everyone and feel that sense of energy and confidence that comes with being a business owner.*

Andy Rennison, Managing Director, 3BM

The managing director of 3BM believes the joint venture model with an independent partner with a minority share has already had a positive impact. Prospects are themselves employee-owned and have a deep understanding of and commitment to the model. They have also provided constructive challenge to the team and helped them think about the details of independent operations (insurance, credit ratings, trading history, bank accounts) and ensured 3BM has 'hit the ground running'. The managing director is clear however that 3BM is an employee-led organisation - employees retain decision making powers as crucially the joint venture partner has insufficient shares to veto board decisions:

*Prospects have come in and got under the skin of our people and processes and business planning models. It is very reassuring and there are a lot of things to learn...it is good to have that external review...I am absolutely sold on the joint venture model...The model works because it is not like similar, alternative models used in the past or mooted; they are a minority stakeholder and that is really important. They are a genuine partner and are here to advise, but the decisions are our decisions.*

Andy Rennison, Managing Director, 3BM

### Position in the marketplace and financial viability

Prospects as the joint venture partner provided the 3BM with considerable amounts of support to make sure they was ready for their launch and staff are positive and confident they can succeed. There is still work to be done but the mutual has been very well received by the marketplace and already 3BM's business is growing:

*We are already delivering services and raising invoices. We have secured a couple of new contracts and new schools have come to us. We have a brand as an employee mutual that clearly makes us different to everyone else out there. Our schools value that, as they can see and more importantly feel, our social purpose. We didn't spin out to fill shareholders pockets, but to enable us to continue to deliver quality services, for better value for money and that we can all benefit from. Most of our schools were able to benefit from a small price reduction this year, which demonstrated very early on, our intentions. .*

Andy Rennison, Managing Director, 3BM

3BM are looking to recruit more staff to support additional work from schools and as a consequence may also need to take on additional office space. The services selling are in line with those outlined in the business plans which were developed as part of the transition. Financial projections – even at this early stage - are being exceeded; the team were purposefully cautious and are finding themselves able to meet these targets:

*When we were going through the procurement process we were uncomfortable about being bullish and setting ourselves up to fail. We wanted to meet expectations and at the moment, we are exceeding our growth trajectory comfortably... The research we did and the knowledge we gained as a tri-borough group of staff over the years, has stood us in good stead.*

Andy Rennison, Managing Director, 3BM

### **The new commissioner-provider relationship**

During the transition, as arrangements became increasingly formal, legal and technical, the council and the spin-out team had to distance themselves from each other professionally and develop a new more formal relationship to prevent any conflict of interest:

*Project governance [is important]...we wanted what was in the best interests of the council and the staff and that was an interesting dynamic! We had to stumble our way through that one!...We ended up with a programme board that was split in half - half a session just the council, half with [spin-out] staff.*

Lucy Vaughn, Corporate Transformation, London Borough of Hammersmith and Fulham

This was complicated by the need to collaborate to procure (the right) independent sector partner and the council and the spin-out team had to negotiate their respective involvement in the different aspects of this decision. Facilitating all of these processes required considerable time and input on the part of all stakeholders and with so many stakeholder groups involved, negotiating and balancing interests whilst ensuring a fair and proper process was extremely challenging:

*Relationships became increasingly difficult simply because of the requirements on 3BM, it is a very resource-intensive process...At the end when we were negotiating the contract it became a proper commercial relationship with both sets of lawyers negotiating - once lawyers get involved it becomes a battle of wills and wits, this perhaps overly affected the relationship at some points.*

Andy Ruane, Procurement Project Manager, London Borough of Hammersmith and Fulham

Despite the challenges throughout the transition stakeholders on all sides worked hard to ensure relationships remained in place. The spin-out team already traded the majority of their services and are used to managing client relationships and the council have moved quickly into the client mindset in the way they approach and respond to staff at 3BM. The managing director of 3BM feels the relationship has changed for the better and thinks the councils in the tri-borough arrangement have an excellent sense of the different options for service delivery. The transformation lead from the council also believes the transition process has had a positive impact on the commissioning approach of the local authorities involved:

*I think it has made us more commercial and made us look at the way we contract with organisations. One thing we really did with this was develop a strong performance framework and outcome-focused measures...we have built in [to the contract] measures to reduce payments if [3BM] are not meeting [agreed] outcomes and we will take into*

*account the views of schools, even though we are not contracting with them. We will take a rounded view.*

Lucy Vaughn, Corporate Transformation, London Borough of Hammersmith and Fulham