Social Enterprises

a guide for voluntary and community sector groups on how to set up a social enterprise to run public services
INTRODUCTION BY THE LEADER AND CHIEF EXECUTIVE OF HOUNSLOW COUNCIL

Background

Hounslow Council is carrying out a comprehensive transformation programme to achieve savings, efficiencies and smarter ways of working, while staying focused on delivering residents’ priorities.

The search for efficiencies is inherent in all our work, but cuts in government funding have now increased the pressure for this; we have to save £60 million between 2011 and 2015.

In this context the Council is looking at all options for the future delivery of its services. One option may be to use social enterprises, run by Council staff or the third sector.

Social Enterprise (SE)

SE is an umbrella term for several types of organisation. Generally, however, SE is based on the principle of doing business so as to provide maximum benefit for society. Just like other businesses, SEs trade by providing services to their customers and in doing so they aim to make a profit. However, SEs trade so that they can support communities, improve the environment, increase fairness and improve lives. SEs reinvest most or all of their profits into the service they are providing so they can constantly develop their services for the benefit of society.

The Council’s approach on SEs

The Council firmly endorses these aims and principles. And entrepreneurialism, the bedrock of successful SE, is something the Council wants to help develop right across the borough. The Council therefore welcomes expressions of interest in developing SEs from its own staff and the third sector.

The Council will give whatever support it can to staff and third sector groups who may wish to set up a SE. Although the Council’s resources – financial, legal, HR, procurement, etc – are limited it will support proposals with a good chance of success. And if we reject a proposal we will say why.

We have produced two SE guidance notes, one for Council staff and one for third sector organisations. This one is for third sector organisations. It supplements the Council’s own support by referring third sector groups to external providers of support and funding.
This guidance note

This guidance note covers the following:

- What is Social Enterprise?
- What are the advantages of SEs performing public services?
- What services can be run by SEs?
- What are the risks involved?
- How do SEs actually run public services?
- SE: a variety of models
- Creating a SE: legal forms
- Creating a SE: charitable status
- How to bid to run public services
- Possible sources of funding
- Further sources of advice

Policy criteria for SE proposals

The Council's policy criteria are as follows.

Each proposal to set up a SE will be considered by the Council on its individual merits. A decision on whether or not to support it will be based on how it: reflects elected members' priorities, brings about an enhanced benefit to residents, is financially viable and will deliver a service at less than the current cost of doing so.

Process

The following process for considering SE proposals will apply. The Council will concentrate its resources on proposals with a good chance of success

A screening stage following your initial 'brainstorming'

After an initial 'brainstorming' of ideas, Council staff are invited to submit them to an initial screening stage, to help the Council assess proposals early on and avoid abortive work. More on this is set out in the note at steps one and two.

Screening and a recommendation will be undertaken by a team of Council staff appropriate to the subject of each proposal. A member of the Council's Cabinet will take decisions on which proposals fail or pass the screen. The full Cabinet would take decisions at the later stages of the assessment process.
After the initial screening process

Proposals which pass the screen will then need to work up a feasibility study and a business plan (step three). Thereafter there will be stages around heads of terms and procurement, negotiation and SE creation, and completion (steps four to six in the note). A suitable cohort of officers will carry out the analyses, provide support and make recommendations at each stage. The Cabinet will take final decisions.

Enquiries

Enquiries should be sent by e mail to socialenterprise@hounslow.gov.uk

Conclusion

Setting up a SE isn’t straightforward. But the Council will provide whatever support it can to help you develop strong proposals.

Good luck!

COUNCILLOR JAGDISH SHARMA, LEADER

MARY HARPLEY, CHIEF EXECUTIVE
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is Social Enterprise?</td>
<td>6</td>
</tr>
<tr>
<td>What are the advantages of SEs performing public services?</td>
<td>11</td>
</tr>
<tr>
<td>What services can be run by SEs?</td>
<td>12</td>
</tr>
<tr>
<td>What are the risks involved?</td>
<td>13</td>
</tr>
<tr>
<td>How do SEs actually run public services?</td>
<td>15</td>
</tr>
<tr>
<td>SE: a variety of models</td>
<td>17</td>
</tr>
<tr>
<td>Creating a SE: legal forms</td>
<td>18</td>
</tr>
<tr>
<td>Creating a SE: charitable status</td>
<td>30</td>
</tr>
<tr>
<td>How to bid to run public services</td>
<td>32</td>
</tr>
<tr>
<td>Possible sources of funding</td>
<td>44</td>
</tr>
<tr>
<td>Further sources of advice</td>
<td>46</td>
</tr>
</tbody>
</table>
What is social enterprise?

This guide is aimed at third sector groups interested in setting up a social enterprise and bidding to run public services on behalf of the Council. A separate guide is available for Council staff who want to start a social enterprise within their workplace.

Social enterprise is an umbrella term covering several types of organisation. Generally, however, social enterprise is a way of doing business that is designed to provide maximum benefit for society. Just like other businesses, social enterprises trade by providing services to their customers, and in doing so they hope to make a profit. However, social enterprises trade so that they can support communities, improve the environment, increase fairness and improve lives. Social enterprises reinvest their profits into the service they are providing so that they can constantly develop their services.

Social enterprises can come in several forms, below are some examples:

**Carers Direct (SW) Ltd**

A co-operative established in 2002 to provide health care services in the community, Carers Direct (SW) Ltd is driven by morals, ethics and commitment rather than for profit. The co-operative provides services for social services departments and a private client base. It is run by a board of five directors, which are nominated and elected each year by the co-operative’s workers. It now has a turnover of £4m per annum. It has found that the co-operative model brings in commitment and involvement from all workers, as they feel that they are all members of the business, but advises new social enterprises to carefully research their base and make sure all participants are equally clear about their commitment to the same goals.

**Harwich Connexions**

Harwich Connexions grew out of an accessible transport project initially run by Essex County Council. A community run organisation, it operates nine vehicles with a staff of nine employees and eight volunteers. The organisation leases its own offices and provides an invaluable service for elderly and disabled people, as well as community groups. Management is elected from community representatives. The organisation has been so successful that it has taken over other council services, including a tourist information office and youth hostel.

**Compass Community Transport**

Compass is a registered charity, formed as a company limited by guarantee, to provide sustainable transport services to community groups in Sunderland. It plays a key role in the local community, being a member of the North East Community Transport Forum and developing a list
of 150 partner organisations. It helps to fund its community activities with commercial work, after having benefited in its early years from the Neighbourhood Renewal Fund and the Single Regeneration Budget. The charity competes with local taxi services, but finds that customers are happy to pay a small premium as they are aware of the charity’s important community work. It suggests that growth has required a new focus on controlling overheads, which can grow disproportionately with revenue.

Pathfinder Mutuals

The Government has announced that twelve new social enterprises will act as ‘pathfinders’ to demonstrate the process of handing services to social enterprises. These include the children’s services department at Hammersmith & Fulham, which is exploring new models of delivery with its staff and neighbouring local authorities. Lambeth’s Resource Centre for people with physical and sensory impairments is looking to bring employees, service users and existing social enterprises together to manage the service. Other social care and children’s services departments moving to social enterprises are located in Swindon, Kensington and Chelsea and Westminster.

Fusion Lifestyle

Fusion Lifestyle is a social enterprise which started trading in 2000. Fusion has grown to operate 52 leisure centres on behalf of local authorities and educational facilities with 7.5 million visits per year. Fusion Lifestyle is a charitable company limited by guarantee and is governed by a voluntary board of trustees. As a charity, all of its income is reinvested in the services it provides.

Other examples of possible interest

Merton

Optional Care, home help social enterprise wholly owned by Age Concern Merton is providing help with daily tasks (although not personal care) on a pay for basis: http://www.ageconcernmerton.org.uk/?q=node/31

Kingston and Richmond

Kingston and Richmond are establishing a SE to jointly deliver children's services - all services in, including safeguarding. http://cabnet.richmond.gov.uk/mgConvert2PDF.aspx?ID=25507 and http://cabnet.richmond.gov.uk/mgConvert2PDF.aspx?ID=25389
Sutton

Sutton Community Transport social enterprise providing transport services to eligible residents: [http://www.suttonct.co.uk/](http://www.suttonct.co.uk/)

Westminster and Southwark

Reports suggest they plan to join their communications departments into a single social enterprise (trading company). Some debate over whether this is a true SE.

Westminster


Kensington and Chelsea (with other Inner London Boroughs)

The Wedge Card has been developed to support independent shops and retailers [www.wedgecard.co.uk](http://www.wedgecard.co.uk)

Hammersmith and Fulham

Membership circle social enterprise (Community Interest Company) established based on the Southwark model. Residents join the membership circle to access activities, skills training and to meet new people; especially targeted at older people. [http://www.hfcircle.org.uk/our_story.php](http://www.hfcircle.org.uk/our_story.php)

Hounslow Education Business Partnership

Hounslow's Education Business Partnership has secured a national reputation for the quality of its work to set up exciting opportunities for school pupils to engage in 'work-related learning'. This might be on an 'industry day' in school, supported by a range of local business partners; a carefully designed work experience placement to support a student's career aspirations, or a special project developed by a business partner with teachers to ensure the curriculum is based in the real world.

With the cessation of key grants supporting this area of work in March 2011, the HEBP decided it was vital to operate differently and move away from the structure where the Partnership's officers were employees of the Council. This had provided some advantages in the past, but a successful EBP going forward would need much more flexibility to pursue funding, hire specialist staff for short term projects, and be able to restructure and re-invent itself quickly. In fact they had already established a Charity in order to access a specific funding stream to support a social enterprise project to open a shop on Brentford High Street. This was to provide the vehicle for the transfer.
Declining budgets meant that there were 2 redundancies and a new structure had to be developed, all while continuing to support the schools and the businesses with their ongoing projects and placements.

The transfer is due to take place in Summer, 2011 after negotiations regarding pensions transfers are complete.

Successful social enterprises have shown themselves to be sustainable and resilient. In fact, many of them have grown throughout the recession. As organisations with a social conscience, they are dedicated to doing good in their communities. And as trading businesses, they can bring an entrepreneurial spirit to the work that they do.

Traditionally, Hounslow and other local authorities have either carried out public services in-house, or occasionally outsourced them to commercial organisations. Social enterprise now offers a real alternative.

**Hounslow Community halls**

Each SE proposal to run a Council service will, of course, have its own set of considerations. But, at the time of going to print with this guidance note, readers may be interested in work to date on the possible transfer, from the Council’s contractor to community groups, of the operation and management of some of its community halls.

In the first instance the Council has offered existing groups using certain halls the opportunity to take on their day to day operation, while requiring that the halls are kept open for public use.

Each of these halls has different core community groups operating from them, or interested in them; different issues with building ownership and operation; and different running costs and condition.

The Council has met with local groups, including those currently operating out of many of the halls, to discuss the possibility of transfer, including funding, future use and other relevant issues.

**The current position**

The current position across the selected halls is encouraging: either the groups currently using them, or other community groups, have expressed a willingness to join forces and take over their operation and management, at a cost which produces savings for the Council while keeping the halls in public use. In this way, the policy criteria which the Council is applying when considering SE proposals (see the introduction to this note from the Leader and Chief Executive) would be satisfied.
Lessons Learnt

The process takes time and human resources, from both the Council and the community groups, but it is possible.

Experience with these halls suggests that a sufficient lead-in time might be at least 12 months, to fully secure the conditions for transfer which both parties can sign up to. This period might be reduced in future as we gain experience.

Not surprisingly, we also found that where local people have a clear interest in the continuation of the service, the process of transfer becomes easier.
What are the advantages of social enterprises performing public services?

There are several advantages of social enterprises playing a role in the running of public services:

**Community involvement**

Social enterprises can be formed by local people who have a passion for the services in question, meaning that facilities can be managed by the people who know them best. Existing social enterprises which run public services elsewhere can set up local consultation groups to advise on the running of local facilities.

**Access to external funding**

As independent organisations, social enterprises are free to seek funding from a range of sources, including lottery funding, government grants, charitable trust funding, sponsorship and bank lending. Several of these funding sources are not readily available to a local authority.

**Direct, local management**

Social enterprises can focus their management time solely on the services that they are running, and are not part of the local authority management systems. This allows for flexible, non-political management that can react more quickly to market forces and local issues.

**Significant tax savings**

Social enterprises with charitable objects are able to claim an 80% reduction in National Non-Domestic Rates (a property tax paid on non-residential property) and may be able to claim a full exemption if the local authority operates such an arrangement. If the social enterprise registers as a charity, it can also claim the tax back on donations made to them through the Gift Aid scheme. Furthermore, in the sporting and cultural sectors, social enterprises may be exempt from collecting VAT on admission prices.

**Protection of public assets**

Social enterprises are not a form of privatisation. Social enterprises operate under strict management contracts and are not able to sell public assets for their own gain.
What sort of public services can be run by social enterprises?

In principle, social enterprises can apply to run almost any type of service that the Council is currently providing. But first, it is important to understand what is meant by a “service”.

Local authorities have two main roles. One is to carry out their functions, and the other is to provide public services.

A function is something which requires the Council to make a decision. Usually, functions are given to local authorities by law. An example of a function is the Council’s duty to make planning decisions. It is important that functions are carried out by the Council, so that its democratically-elected councillors can be accountable to their constituents.

A service, on the other hand, is an activity that is carried out by the Council as a result of the decisions it has made. So services tend to be incidental to functions, or follow on from them. Persons interested in setting up a social enterprise should contact the Council for an initial discussion to identify services of interest and discuss the feasibility of taking on those services.

For an example of the difference between a function and a service, think about social care. One of the Council’s functions would be to study the local population and decide how it should fund social care and how it should split its funding between residential care and home help. Once this strategic decision has been made, the provision of the home help itself is a service.

Some examples of Council services are:

- Managing the Council’s housing stock and sheltered accommodation
- Providing educational services and facilities for young people
- Looking after Hounslow’s environment
- Providing adult social care, such as home help.
What are the risks involved?

Taking on the running of a public service requires careful thought, planning and professional advice. Some other useful sources of advice and guidance can be found listed later in this guide.

Potential social enterprises should particularly consider the following points:

Lack of expertise in certain areas

Social enterprises will not generally be able to make use of the Council's accountancy, business planning, legal and marketing professionals. As expertise in these areas can be vital to the successful operation of public services, this expertise may have to be bought in from other providers or through staff recruitment.

Reliance on key staff

Unless they already have a great deal of experience in providing a particular type of service, social enterprises will initially be very dependent on the advice and support of senior staff within the service that they take over. Social enterprises should develop contingency plans in the event that key staff leave the organisation or become unavailable.

Personal liability

In some circumstances, the people involved in running a social enterprise may expose themselves to personal liability – that is, they may be required to contribute out of their own pockets if the social enterprise is unable to meet its debts. This risk can be significantly reduced by choosing an appropriate legal form for the social enterprise, which is explained further in the next section. Even with this protection, the people who act as directors of the social enterprises may be personally liable if they fail in their duties towards the social enterprise or other statutory duties. Insurance products are available to protect against accidental failures, though these will carry a modest cost which is worth considering.

TUPE and pensions

When a social enterprise takes over the running of a service, it will also become the employer of any person who spends the majority of his or her working day performing that service under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE"). This can include directly employed staff and, potentially, staff employed by contractors.

When staff move between employers, they are entitled to certain important rights by law. The most important of these are the right to transfer with their existing terms and conditions and the right to be consulted on what the changes mean for them. Social enterprises are generally
prohibited from making any changes to staff terms and conditions for reasons connected with the transfer. The actual staffing costs therefore need to feature in the social enterprise’s feasibility studies and business plans. It is not possible to ‘opt-out’ of TUPE or to make changes immediately after the transfer: social enterprises must take staff on the pay and conditions that they are accustomed to.

Staff are also entitled to access to a comparable pension scheme after the transfer, irrespective of whether they were active members of the pension scheme prior to transfer. All Council employees have access to the Local Government Pension Scheme (LGPS), and social enterprises that are appointed to run services are likely to apply to become separate employers in this scheme (admitted bodies), so that they can continue offering it to staff after the transfer. Pension service will be continuous for those staff who carry on their membership of the LGPS through staff co-operatives. It is important for staff co-operatives and the Council to reach an agreement on what this entails, particularly if the scheme is underfunded at the time of transfer.

The social enterprise will need to make provision for the costs of the scheme that might vary year by year arising from, such as:

• benefit changes in the scheme
• changes in pay
• the costs of any discretionary benefits awarded
• redundancy pension strain costs of providing statutory un-reduced pensions at >55 on;
• changes in retirement age;
• ill-health retirement and death benefit costs.

A new social enterprise will need to engage with the staff affected and put in place a system capable of administering the employer side of the scheme.

Pensions will be a complex and important element of employing staff and good advice will be needed to avoid possibly significant financial risks.
How do social enterprises actually run public services?

If a social enterprise is chosen to run public services on behalf of the Council, it will be required to enter into several contracts with the Council. The contracts, which will last for a fixed number of years, will define the relationship between the social enterprise and the Council.

The following contracts would typically be required:

• A ‘transfer agreement’ is used to transfer responsibility for delivering the services to the social enterprise. Responsibility for delivering the services, as well as working with the Council’s existing suppliers, will pass to the social enterprise.

  The agreement would also deal with the transfer of existing staff and their pension entitlements. Both parties should think carefully about what should happen to existing employment claims and grievances and how pension deficits should be handled.

• A ‘management agreement’ is used to control how, and for how long, the services will be performed by the social enterprise. It may set objectives and performance indicators for the social enterprise to comply with, and lay down basic requirements such as minimum opening hours. These requirements may be fixed or may change throughout the contract, depending on the Council’s priorities. The agreement will also create a series of regular reporting meetings between the parties so that progress can be measured and any concerns raised.

• A ‘funding agreement’ will set the terms on which the Council may fund the social enterprise. This funding may not be present for the full life of the management agreement. If this is the case, it is important that social enterprises ensure that they have a business plan that gradually decreases their reliance on Council funding.

• If the services involve running Council-owned facilities, the social enterprise may be given a lease of the facilities. The lease is a very important document as it will specify which party has responsibility for insuring, maintaining and decorating the facility. It can therefore have a big impact on a social enterprise’s business plan. Social enterprises should inspect the facilities and arrange for professional site surveys. Social enterprises requiring office space and other business facilities may be able to rent these from the Council or seek these on the open market.

• The social enterprise may also receive leases of equipment, such as fitness equipment within a sports centre. An agreement would control how property is to be maintained and replaced, and who is to bear the cost of this.
• Finally, if the Council is to provide services to the social enterprise, such as IT support, a separate agreement would specify the price and the service levels that the social enterprise can expect.
Social enterprise: a variety of models

Social enterprises created by staff can follow a number of different models. The different legal forms of social enterprise are discussed later, but first it is important to think about the broad type of model that best suits your service.

Co-operative

Staff could create a co-operative to operate the services. The co-operative would be jointly owned by each member of staff. A co-operative is run by an elected board, but every member has a vote on the co-operative’s direction.

Although social enterprises reinvest much of their profit into the service they provide, it is possible to structure a co-operative so that staff can benefit from the success of the organisation if, for example, it exceeded its growth targets or found ways to cut its costs.

Unfortunately, it is not possible for a staff-owned organisation, or one that distributes a profit share, to become a charity. It will therefore compete from the same tax position as commercial businesses.

Charity

Charitable status brings with it significant tax savings, and the ability to raise funds through donations and grants. Charitable status is covered further on page [xx].

Generally, a charity’s directors are not able to receive a salary from the charity. Therefore, staff creating a charity to run public services would need to recruit independent board members from the community.

Partnership with existing social enterprise

Rather than creating a brand new organisation, staff may wish to consider whether an existing charity or social enterprise could help to run the service. By teaming up with an established organisation at an early stage, some of the time and expense required to create a new entity can be avoided. The partner organisation could be an existing social enterprise or charity, or it could be a proposed social enterprise operating in another Council’s area. While partnering means sharing decision-making with others, it could reduce costs and increase access to valuable skills.
Creating a social enterprise: legal forms

Once you have made the broad decisions as to how the social enterprise should be run, and whether it will become a charity, you must then decide what legal form it should operate under.

At their core, social enterprises are simply a group of interested people, looking to improve their local services and communities. However, running public services involves owning property, employing staff and entering into contracts. Because these activities can sometimes lead to claims (such as employment grievances), those running a social enterprise are advised not to do so in their own names. Creating an appropriate legal form for the social enterprise means that the social enterprise itself will be liable for any claims, rather than those involved in creating it.

There are several types of organisation that can be used:
**Unincorporated association**

An unincorporated association is simply a group of people working together. It is not a separate body, which means that the participants offer services, hire staff and own premises in their own names.

This means that the people entering into these transactions will be liable if the group is unable to pay its debts. If the group has to pay damages under a contract, for example, the individuals who signed the contract will have to meet this amount from their own funds if the damages are greater than the group’s assets.

For this reason, unincorporated associations are not recommended. It is usually a good idea to create a separate ‘incorporated’ organisation through which the services can be run. This means that it will be the organisation itself that enters into transactions and, if it gets into debts, the participants will not lose their own money.

<table>
<thead>
<tr>
<th><strong>Does it offer limited liability?</strong></th>
<th>No. Members (particularly those on the management committee) expose themselves to personal liability if the association cannot meet its debts.</th>
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</thead>
<tbody>
<tr>
<td><strong>Can it be charitable?</strong></td>
<td>Unincorporated associations can become charities if their objectives are approved by the Charity Commission with whom it would be registered.</td>
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<tr>
<td><strong>Can it distribute profits?</strong></td>
<td>Yes, so long as it is not a charity.</td>
</tr>
<tr>
<td><strong>How is it governed?</strong></td>
<td>The management of an unincorporated association will be controlled by an agreement between its members, meaning management can be flexible but not always well-defined.</td>
</tr>
<tr>
<td><strong>How is it regulated?</strong></td>
<td>Non-charitable unincorporated associations are not regulated. The Charity Commission regulates those which have become charities.</td>
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### Company limited by shares

Companies are the most common type of incorporated association.

A company that is ‘limited by shares’ can issue shares to its members in exchange for investments. The level of a person’s shareholding then controls how much say they can have in the company’s management and how much they may be able to receive if the company distributes its profits.

Companies are well understood by the private sector, which may make it easier to raise funding. However, unlike unincorporated organisations, companies need to file accounts and other documents at Companies House. This can make companies more expensive to run as the help of accountants and other advisors may be necessary.

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<th>Does it offer limited liability?</th>
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<tr>
<td>Yes. Once members have fully paid for their shares, they generally have no further liability.</td>
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<th>Can it be charitable?</th>
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<tr>
<td>Not generally. Charitable companies tend to be limited by guarantee – see the next box.</td>
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<table>
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<th>Can it distribute profits?</th>
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<tr>
<td>Yes. Profits are distributed in proportion to members' shareholdings.</td>
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<tr>
<td>Companies are controlled by a board of directors who have special responsibilities under company law. Every company has a set of ‘articles of association’ which define the purpose of the company and the way in which it is to be run. These articles can be customised to the social enterprise’s wishes, giving considerable flexibility.</td>
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If the company is not charitable, its articles of associations can be changed throughout its life, which gives flexibility but can reduce trust in the long-term future of the organisation.
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<td>Companies must file accounts, annual returns and other documents with Companies House. These documents become visible to the public.</td>
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## Company limited by guarantee

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<tr>
<th>Does it offer limited liability?</th>
<th>Yes. Members are only liable up to the notional amount guaranteed.</th>
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<tr>
<td>Can it be charitable?</td>
<td>Yes, this form is often used by charities.</td>
</tr>
<tr>
<td>Can it distribute profits?</td>
<td>No generally. The 'limited by shares' model is much better for this purpose. No distributions are permitted at all if the company is a charity.</td>
</tr>
<tr>
<td>How is it governed?</td>
<td>Companies are controlled by a board of directors who have special responsibilities under company law. Every company has a set of 'articles of association’ which define the purpose of the company and the way in which it is to be run. These articles can be customised to the social enterprise’s wishes, giving considerable flexibility. Charitable companies can only alter their objectives within their articles of association if the Charity Commission agrees. This gives people dealing with the company confidence that its funds will be used for the correct purpose.</td>
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<td>How is it regulated?</td>
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### Community Interest Company

A community interest company (or ‘CIC’) is a special type of company designed for use by social enterprises.

Like a charitable company, a CIC’s articles of association will state that its property can only be used for certain stated purposes. This aspect cannot be changed by the company, which can give people the confidence to donate and work with the CIC, knowing that their inputs will be used for the intended purpose.

However, CICs cannot become charities and therefore they do not enjoy any of the tax breaks given to charities. CICs are therefore most appropriate for social enterprises which are unable to meet the requirements for charitable registration and where some outside person wishes to invest in the organisation.

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<tr>
<td>Can it be charitable?</td>
<td>No, CICs cannot be charitable.</td>
</tr>
<tr>
<td>Can it distribute profits?</td>
<td>CICs can distribute profits, but only to a limited extent controlled by law.</td>
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<td>How is it governed?</td>
<td>Like other companies, CICs are controlled by a board of directors who have special responsibilities under company law. CICs have a set of ‘articles of association’ which define the purpose of the company and the way in which it is to be run. These articles can be customised to the social enterprise’s wishes, giving considerable flexibility. CICs are restricted in the extent to which they can alter their objectives within their articles of association. This gives people dealing with the company confidence that its funds will be used for the correct purpose.</td>
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<tr>
<td>Companies must file accounts, annual returns and other documents with Companies House. These documents become visible to the public. CICs are also regulated by a specialist CIC regulator.</td>
<td></td>
</tr>
</tbody>
</table>
## Industrial and provident society

Industrial and provident societies are incorporated bodies but are not companies.

There are two main types – co-operative societies and community benefit societies. Social enterprises will tend to be of the second type.

Community benefit societies are designed to benefit the community through their trading. Housing associations are often this type of organisation. They can generally only be created if there is a reason why a company model cannot be used.

<table>
<thead>
<tr>
<th>Does it offer limited liability?</th>
<th>Yes. Once members have paid a nominal sum for their shares, they generally have no further liability.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can it be charitable?</td>
<td>Community benefit societies can be charitable.</td>
</tr>
<tr>
<td>Can it distribute profits?</td>
<td>Non-charitable societies can distribute profits, but this should not be their primary focus.</td>
</tr>
<tr>
<td>How is it governed?</td>
<td>Industrial and provident societies tend to be governed by a management committee. Societies have a set of rules, which perform a similar function to a company’s articles of association. Community benefit societies can opt-in to restrictions on the extent to which they can alter their objectives within their rules. This gives people dealing with the society confidence that its funds will be used for the correct purpose.</td>
</tr>
<tr>
<td><strong>How is it regulated?</strong></td>
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</tr>
<tr>
<td>-------------------------</td>
<td></td>
</tr>
<tr>
<td>Societies must file accounts, annual returns and other documents with the Financial Services Authority. These documents become visible to the public. They are regulated only by the FSA, even if they are a charity.</td>
<td></td>
</tr>
</tbody>
</table>
### Charitable incorporated organisation

<table>
<thead>
<tr>
<th>The CIO is a new type of organisation and is designed to be a new, simple way to create a charity. The idea behind CIOs is that they will be easier and cheaper than a company to operate as they are regulated only by the Charity Commission. A charitable company has two regulators: the Commission and Companies House, and both have separate filing requirements. CIOs cannot currently be registered, but are due to become available later in 2011.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Does it offer limited liability?</strong></td>
</tr>
<tr>
<td>Yes. Members are only liable up to the notional amount guaranteed.</td>
</tr>
<tr>
<td><strong>Can it be charitable?</strong></td>
</tr>
<tr>
<td>Yes. All CIOs must be charitable.</td>
</tr>
<tr>
<td><strong>Can it distribute profits?</strong></td>
</tr>
<tr>
<td>No. As CIOs are charitable, no profit distribution is allowed.</td>
</tr>
<tr>
<td><strong>How is it governed?</strong></td>
</tr>
<tr>
<td>There are two models. In one model, every member runs the charity. In the other member, the charity is run by a smaller board of trustees. A CIO has a constitution which controls its objectives and the way in which it will be managed. These cannot generally be customised in the same way as a company’s articles of association, so a CIO is only useful if the model constitutions are acceptable.</td>
</tr>
<tr>
<td><strong>How is it regulated?</strong></td>
</tr>
<tr>
<td>CIOs are regulated only by the Charity Commission.</td>
</tr>
</tbody>
</table>
Social enterprises should seek the advice of a solicitor or accountant to help them choose the best legal form for their proposed activities, and for information about the registration formalities.
Creating a social enterprise: charitable status

In some cases, a social enterprise can become a charity. A charity is not a particular legal form, but rather a status which can apply to several legal forms.

As well as offering a well-understood and trusted ‘brand’, becoming a charity offers significant tax advantages:

- Donations to charities are exempt from capital gains tax and inheritance tax and, through the Gift Aid scheme, charities can reclaim the income tax paid by the donor;
- Charities do not generally pay income or corporation tax, which can lower their costs compared to the non-charitable sector;
- Charities can pay a reduced rate of VAT (5%) on some of their energy costs and a zero rate of VAT on adaptations for disabled persons. They can sometimes claim exemption from climate change levies.
- Charities can receive up to a 80% relief on the National Non-Domestic Rates payable on their premises automatically. The Council has discretion to relieve the charity of the remaining 20% of the NNDR payment. The net NNDR saving for the Council is 85%.
- Charities can, in some circumstances, avoid adding VAT to the prices they charge for sport and cultural services such as museums, art galleries and theatres or leisure centres.

Charities can carry out a limited amount of trading, but their main focus is on their charitable purposes. Charities wishing to trade more extensively can create subsidiary companies which donate their profits back to the charity. To register as a charity, a social enterprise must have exclusively charitable purposes, which it performs for the public benefit.

Charities are unable to distribute any profits to their members, either as dividends throughout its life or on winding-up.

Broad charitable purposes are defined in the Charities Acts. In the past, the following local authority services have been accepted as charitable.

- Housing (stock ownership and management);
- Educational services;
- Town centre improvement projects;
- Sheltered accommodation;
• Social services (including home help and domiciliary care);

• Residential and outdoor facilities for young people.

• Museums;

• Art galleries;

• Concert halls and theatres;

• Sports, leisure and recreational facilities;

• Parks and recreational grounds and countryside facilities;

• Crematoria;

• Tourist facilities; and

• Libraries.
How to bid to run public services

Steps involved in creating a social enterprise to run public services

**Step 1**
Brainstorming
- Identify services and locations
- Consider basic viability of idea
- Consider focus, values, aspirations and outcomes
- Make information contact with Council

**Step 2**
Outline Expression of Interest and Screening
- Screening by Council
- If successful move to next step

**Step 3**
Feasibility and Business Planning
- Submit formal expression of interest to Council
- Detailed Feasibility Study
- Assess available skills
- Business planning and cash flows
- Funding options

**Step 4**
Heads of Terms and Procurement
- Finalise plans for corporate entity of social enterprise
- Possible procurement exercise
- Heads of terms for transfer
- Decide extent of buy back of Council services

**Step 5**
Negotiation and Social Enterprise Creation
- Local authority approval following procurement exercise
- Recruit management committee of social enterprise
- Register corporate entity
- Negotiate contract documentation and finalise grant funding

**Step 6**
Completion
- Transfer “business”
- Accept transfer of staff
- Join LGPS pension scheme
Step One: Brainstorming

Allow 4 – 6 weeks – although the time suggested for each step is approximate and will vary from proposal to proposal.

The first step is to consider the services that your proposed social enterprise would be interested in running. Creating a successful social enterprise will always be a collaborative effort, so early discussions with like-minded people are key. It will also be worth speaking to existing social enterprises. The organisations listed at the back of this guide may be able to put you in touch with a suitable example. The Council is also happy to help you formulate ideas at an early stage and provide guidance on the decision making process and you can make initial contact at socialenterprise@hounslow.gov.uk to advise the Council as to a possible approach. This contact is important so as to ascertain the Council’s own plans for the service to avoid any abortive work after your brainstorming.

Your proposals may not necessarily match up exactly with the way in which the Council currently runs the services. For example, you may wish your social enterprise to concentrate on a particular area of the borough. Alternatively, your proposal could cover two services that are currently being performed separately. Social enterprises can come in all shapes and sizes, and you will need to think about the best fit for your services.

At this stage, you should consider the basic viability of your idea. Ask yourself if it makes sense to take on the relevant service in isolation; there may be other partners you need to work with. Think about possible sources of funding and the skills your enterprise would require. If the budget for the service is already under pressure, think about how your social enterprise could deliver the service with greater efficiency than now.

It is also vital to sketch out the reasons why you are interested in running the service. The founding members of the social enterprise will need to explain to future colleagues and, potentially, funders why the taking over of the service is an exciting and viable proposition. Think about your short, medium and long-term objectives and how long you would need to reach each goal.
One of the key advantages of social enterprise is the ability to bring innovation, quicker decision making, and added value to the service. You should think carefully about how improvements could be made under a new structure.

If the social enterprise will employ other staff, who would also be transferred from the Council, think about whether you have or are likely to get their support and enthusiasm for the initiative.
Step Two: Outline Expression of Interest and screening

*Allow four weeks*

Once they are satisfied that they have developed a feasible proposition, those interested in creating a social enterprise should prepare and submit an outline expression of interest. The Council will consider all formal requests carefully, although not all can necessarily be supported. To help the Council to make its decision, the expression of interest should be clear and well-researched.

Expressions of interest should be in writing and contain the following information:

- Details of the social enterprise – such as its name and address (where known), the proposed legal form of the organisation and, if it has already been set up, a list of its current directors or management committee including their skills and experience.

- Details of the services in which the group is interested, referencing any specific facilities or geographical areas unless borough-wide.

- Details of the Council staff groups that would be affected.

- Reasons for the proposal and details of the outcomes that the social enterprise intends to achieve – such as the ‘social value’ of the proposal, its ability to deliver better value for money and better service for customers or users.

- An explanation of why the social enterprise wishes to run the service and why it believes it is capable of doing so, or will become capable of doing so.

When the Council receives your outline expression of interest for screening, it may accept it or reject it. Alternatively, it may tell you that it is unacceptable in its current form but could be accepted with modifications. If your expression of interest is unsuccessful the Council will give you the reasons.
The Council will advise persons expressing an interest of the timescale for the Council’s consideration. It may take the Council longer to consider expressions of interest if more than one is received for the same service.

**Step Three: Feasibility and Business Planning**

*Allow two months*

<table>
<thead>
<tr>
<th>BRAINSTORMING</th>
<th>OUTLINE EXPRESSION OF INTEREST AND SCREENING</th>
<th>FEASIBILITY AND BUSINESS PLANNING</th>
<th>HEADS OF TERMS AND PROCUREMENT</th>
<th>NEGOTIATION AND SOCIAL ENTERPRISE CREATION</th>
<th>COMPLETION</th>
</tr>
</thead>
</table>

Once the Council has supported your outline expression of interest, you should then research your idea in more detail.

Handing the running of a service to a social enterprise is a serious commitment on the part of both parties. To ensure that your good ideas translate into a feasible business model, social enterprises should carry out a feasibility study. The feasibility study will help you decide whether to make a formal expression of interest.

A feasibility study is a test of the strengths and weaknesses of the proposal, and can give very useful insights into its likelihood of success. Feasibility studies are often carried out by business or finance consultants who specialise in your chosen field. If purchased on the open market, a feasibility study can be expensive, but funding may be available to help from specialist grant providers, such as those listed at the end of this guide.

A feasibility study is likely to examine the following issues:

- **The reasons** for moving to a social enterprise structure. This section may examine the context in which the decision is being taken, such as the need for the Council to make savings.

- **The rationale** for this type of organisation. This section will look at the advantages and disadvantages of the chosen model, and the steps that will need to be followed to bring it into existence.

- **The broad objectives** of the new organisation. The study will examine whether the objectives are realistic given the circumstances in which the social enterprise will operate.
• The **staffing structure** of the social enterprise, including risks such as an over-reliance on key roles.

• The **risks** faced by the social enterprise, including an assessment of their likelihood and the seriousness of their consequences.

• An assessment of the **revenue costs** of the business, which determines how efficiently the business can run and the likely pricing structure it will need to adopt.

• The **timescale** that will be required for implementation.

One of the key ingredients in a successful proposal is the right collection of skills among the social enterprise’s board of directors.

Directors should not be appointed at this stage, but social enterprises should plan how they are to be recruited and retained and the experience you are looking for. The Council would expect that social enterprises advertise vacancies widely, using local newspapers in conjunction with notice boards at facilities and websites.

The application process for board positions should be fair and transparent. To achieve this, it is recommended that social enterprises draw up a formal person specification and ask all applicants to fill in a common application form.

A successful board is likely to include:

• Persons with some prior board-level experience;

• Persons with experience of business, finance, property management, human resources, marketing, legal practice, customer service and community liaison;

• Persons who are long-term, regular users of the services;

The Council may in some circumstances ask to nominate one or two members to the board of directors to maintain a link between the Council and the social enterprise. These nominees could be elected councillors, former councillors or officials. However, to ensure that the social enterprise is legally regarded as being independent of the Council for accounting purposes, the Council’s involvement in the board must give it less than 20% of the total voting power.

Social enterprises with existing boards should consider how they can ensure that local knowledge and experience are used. This could be achieved by setting up a local consultative board.
When considering whether to take over the running of a public service, it is vital to consider how the service will be funded. This means developing a viable business plan including a cash flow that sets out all of the projected costs involved in delivering the service together with the income that you expect to receive from delivering it. To do this, you will need the advice of a firm of accountants or business advisers. You may also be able to get advice from not for profit organisations such as those listed at the end of the guide.

Some public services can be run at a surplus immediately. For these services, the Council would generally require social enterprises to pay for the right to run the service. Most services, however, currently bring in less than they cost to run. For these services, social enterprises would need to agree a funding package from the Council (taking into account charges made to service users) and / or other sources of funding such as loans and grants. This funding package should ideally be guaranteed for a long enough period to allow the social enterprise to find its feet.

In addition to the cash flow itself, a business plan should set out the spirit and purpose of the organisation – what it exists to do, and how you will know when it has succeeded. It should explain how the organisation is different from its competitors, how it will look after its staff and how it will react to risks. Creating a business plan incorporating all of these points will focus the mind and force you to think in depth about your proposals. Once created, the business plan should be referred to throughout the life of the organisation, with necessary updates made and progress against its objectives charted.

An example business plan follows.
# FIVE-YEAR PROJECTIONS

## INCOME STREAMS

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Average</th>
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<td>Normal trading income</td>
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<td>Cafe/Bar</td>
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</table>

## EXPENDITURE

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Average</th>
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<tr>
<td><strong>STAFFING COSTS</strong></td>
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<td>Existing Management and Operating Staff</td>
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<td>Existing Casual Staff</td>
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<td>Absence/training overheads</td>
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<td><strong>TOTALS</strong></td>
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<td><strong>MANAGEMENT COSTS</strong></td>
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<td>Cost of sales</td>
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<td><strong>TOTALS</strong></td>
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<td>Other costs</td>
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</table>
Step Four: Heads of Terms and Procurement Exercise

Timescale will be specified by the Council

If the feasibility study and business planning are acceptable to the Council there will be discussion between the parties as to the terms for any transfer of services. This will include preliminary issues covering extent of the services, contract terms, property, staff and pensions. Heads of terms would be agreed as a basis for further discussion and negotiation.

If the social enterprise’s proposals require the Council to provide significant funding to maintain the service, the Council may be required by law to first carry out a ‘public procurement exercise’.

This means that the Council may be required to advertise the opportunity and give other interested parties the chance to compete for the appointment. This may involve for-profit companies as well as other social enterprises and the Council is not generally permitted to favour one type or organisation over another.

If this happens, the Council will provide full information on the process to all persons who respond to the advertisement and will explain its criteria for choosing a winner. To be considered for the contract, all interested persons must then submit a ‘tender’, which explains how the services would be run. Tenders will be scored by the Council using its published criteria.

Selection criteria will vary depending on the type and extent of services, but the Council will generally want to satisfy itself that the winner has:

- the capability (including the financial resources) to deliver the services. Capability can be demonstrated by referencing prior experience of delivering similar services, or by explaining the skills set of the proposed board;

- considered how the services can be improved as a result of being taken over by them. This improvement could be delivering the services with better value for money, and therefore helping to secure their long-term viability. Services could also be improved by increasing their ‘social value’, such as by making them accessible to a wider section of the community, or developing ways to use the services to deliver additional good to society.
• thought about how it will operate as an independent organisation but work in partnership with the Council and other public services.

As part of the procurement process, you may be required to present your proposals, attend interviews, and negotiate the contract. To do so, you will need to ensure that you are fully prepared and able to answer any questions that may arise.

Social enterprises should note that it is possible that they will be unsuccessful at this stage and, if so, they will be unable to recoup expenditure incurred in preparing their bid.

**Step Five: Negotiation and Social Enterprise Creation**

*Allow up to six months*

At this stage in the process the new social enterprise should be registered as a corporate entity following the decision as to the preferred model and approval of its constitution. If the social enterprise is to be registered with charitable status the application for registration should now be lodged with the relevant authority.

As new organisations, social enterprises will need to comply with ongoing formalities which may not be familiar to those who have not formed a new entity before. This could include:

• the need to prepare and file annual accounts and, where required by law, have these audited;

• the holding of annual general meetings of the members of the company;

• registration for VAT and the submission of VAT returns;

• notification to the Information Commissioner’s Office under the Data Protection Act;

• the keeping of company books, including registers and minutes of meetings;

• the taking out of insurances, including employers’ liability, public liability, directors’ liability and (depending on the terms of our lease) buildings insurance; and
• the appointment of compliance officers for matters such as health and safety, data protection and anti-corruption.

Although social enterprises are independent organisations, it is vital that services are delivered in a spirit of partnership and collaboration with the Council. Both social enterprises and the Council should consider how this relationship can be developed.

The Council may be able to provide important advice and support in the early stages of the social enterprise’s involvement in the services. For example, it is common for the Council to provide payroll or IT support services while the social enterprise gets started. These services should be operated using a written contract which specifies the price payable by the social enterprise and the level of service to be delivered. The parties will need to agree whether this supply of support services will be a long-term arrangement.

Thought should be given as to how the two parties can keep each other informed. Although formal reporting will form part of the contract controlling the service, the parties should also think about whether the social enterprise should play a part in the Local Strategic Partnership, or the ways in which elected members can be kept up to date.

The contract between the Council and the social enterprise is likely to allow for the Council to vary the level of services provided throughout the term, to keep in line with local requirements. It will also include provisions allowing the Council to monitor the performance of the social enterprise, inspect audit documentation and require representatives to meet with the Council on regular occasions to discuss progress.

Step Six: Completion

When all the paperwork has been negotiated and agreed it will be signed by all parties prior to formal handover or completion. On this agreed date the new social enterprise will start work with the transfer of the “business”, its staff and other assets. This will be an exhilarating time for the new enterprise and the start of an exciting journey for all the transferring staff and its board.

Confidentiality
All exchanges between you and the Council will be confidential until formal approval and then in accordance with the Freedom of Information Act.
Possible sources of funding

One of the advantages of social enterprises is that a number of funding sources are open to them which are not generally available to local authorities. Many social enterprises use traditional funding sources, such as banks and building societies. Social enterprises with charitable aims should not underestimate the potential of seeking donations utilising the gift aid mechanism.

However, some organisations specialise in funding social enterprises, and a selection of those appear below:

**Community Development Finance Institutions**

http://www.findingfinance.org.uk/

020 7430 0222

CDFIs can provide funding for social enterprises operating in disadvantaged communities.

**Adventure Capital Fund**

http://www.adventurecapitalfund.org.uk

020 7842 7760

The ACF provides funding to social enterprises operating in the community. Funding opportunities vary over time.

**Social Entrepreneurs Fund**

http://www.bridgesventures.com/social-entrepreneurs-fund

020 7262 5566

This fund, operated by Bridges Ventures, offers commercial funding to social enterprises.

**Other grants and investments**

http://www.fundingcentral.org.uk/

The Funding Central website allows social enterprises to search for grants and investment sources operating in the sector.
Investment and Contract Readiness Fund

The Cabinet Office is providing a new £10 million Investment and Contract Readiness Fund to help take advantage of new markets for public service delivery, and to become investment-ready and attract support from the likes of the new Big Society Bank. The Government will make money available to the Investment and Contract Readiness Fund in April 2012. It will run for three years. A delivery partner will be employed to manage the Fund and their identity should be known by April 2012.

Various

www.fundinginformation.org, is a resource for up to date information about new grant making trusts, and new sources of grants, loans and donations for voluntary organisations, charities, social enterprises and the public sector throughout the UK
Further sources of advice

Social Enterprise Coalition

http://www.socialenterprise.org.uk

020 7793 2323

The UK’s national body for social enterprise

Business Link

http://www.businesslink.gov.uk

The government’s online resource for business

NCVO – The National Council for Voluntary Organisations

http://www.ncvo-vol.org.uk

020 7713 6161

The UK’s largest umbrella body for the voluntary and community sector.

London Voluntary Service Council

http://www.lvsc.org.uk

020 3349 8900

LVSC supports London voluntary and community sector organisations

Social Enterprise London

http://www.sel.org.uk

020 7033 2604

Provider of training, networking and consultancy for social enterprises in London

Social Enterprise Works

http://www.socialenterpriseworks.org/

0117 328 6109
Provides support, advice and guidance to prospective and established social enterprises
Enquiries
Initial enquiries from third sector organisations should be sent by post or email to Kate Tomkinson, Principal Area Initiatives & Community Development Officer, LB Hounslow, Civic Centre, Lampton Road, Hounslow, TW3 4DN, katherine.tomkinson@hounslow.gov.uk

www.hounslow.gov.uk