

Consumer Focus Board

Paper 6

Title: Future of NSMC

Purpose: For decision

Date of meeting: 10 February 2011

Responsible officer: John Bromley

Prepared by: John Bromley

Attachments: Annex A – Section 3 - Using a Company
Keeping it Legal – Legal forms for Social Enterprises

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Bates, Wells and Braithwaite 2003

Overview

- 1 This paper outlines:
 - the evaluation process that took place to determine proposals for the future structure of the National Social Marketing Centre (NSMC);
 - the business strategy for the organisation post April 2011;
 - recommendation to the Board on the timescales for the transition of The NSMC from a business unit within Consumer Focus to a self-standing Community Interest Company limited by guarantee.

Action for the Board

- 2 The Board is asked to note and endorse the evaluation process that has taken place to decide the future organisational structure of The NSMC and that further planning takes place in order to create a Community Interest Company in the 2011-12 financial year.
- 3 That the Board also approve the development of a full transition plan for the June meeting which will include:
 - a comprehensive business analysis against which the future viability of the CIC is assessed;
 - a governance process to oversee the transition from Consumer Focus and separately the running and oversight of the CIC;
 - a timetable against which to monitor the milestones progress towards the setting up of the new organisation.

Background

Who NSMC is and what it does

- 4 The NSMC is part of Consumer Focus and is *the* leading authority on behaviour change in the UK.
- 5 Its mission is to maximise the effectiveness of behavioural change programmes through policy, research and practice. Combining ideas from commercial marketing and the social sciences, social marketing is a proven tool for influencing people's behaviour in a sustainable and cost-effective way.
- 6 We work with organisations across government and across sectors to assist in commissioning and developing, behavioural interventions for social good.

History of The NSMC

- 7 The National Social Marketing Centre was formally inaugurated in 2005 as a joint partnership between the NCC and the Department of Health (DH). It's origins lay in the Choosing Health Public Health White Paper (November 2004) which recommended that social marketing be used throughout the DH and the National Health Service (NHS) to develop effective behaviour change programmes that would contribute to better health for the nation.
- 8 The primary remit of The NSMC was to build capacity of social marketing in England. Since its inception, The NSMC has achieved this objective and has been at the forefront of the creation of a growing social marketing sector that is equipped to meet demand for social marketing services at the local level.

The Relationship with the Department of Health, the National Consumer Council and Consumer Focus

- 9 Some of the NSMC's programmes have been funded by the DH Social Marketing Unit through a system of grants that have been paid firstly to the National Consumer Council and latterly (from October 2008) Consumer Focus. The grants which have been £2m to £3 million per annum have paid for the NSMC hosting costs and programme delivery. This grant mechanism will be discontinued from April 1, 2011. The NSMC has also been commissioned to produce work for other organisations in the public sector both at home and abroad which have amounted to £13million during the lifetime of The NSMC.
- 10 The NSMC is not a legal entity in its own right and is formally part of Consumer Focus. It is a business unit within Consumer Focus and shares services with the rest of the organisation such as finance, information technology, procurement and human resources. The Director of The NSMC sits on the Senior Management Team of Consumer Focus and reports to the Chief Executive Officer. However, The NSMC has its own brand and market identity and, because of the nature of direct funding, its own work programme which is externally agreed between The NSMC and the DH. Historically The NSMC has also had a degree of commercial freedom to attract additional clients and take on other behaviour change projects.

The key issues

A Who will pay when DH stops grant funding The NSMC?

- 11 Given that The NSMC cannot rely upon DH grant in the future, we have had to examine other sources of funding. It is not envisaged that Consumer Focus could should fund The NSMC. The NSMC therefore began a business development programme in June 2010 to evaluate how it would be able to continue without the DH support grant. To this end, The NSMC:
- Commissioned a marketing review of existing and possible future clients to understand the potential for new work post 2010.
 - Developed a programme of work to determine the most effective future organisational/governance structure for the NSMC
- 12 From these work streams The NSMC has developed:
- A clear understanding in which sectors The NSMC can generate project income with a comprehensive understanding/listing of the number and types of clients who wish to work with the organisation moving forward
 - A recommended organisational structure and governance process for the organisation

Business Strategy and overall direction for the NSMC

- 13 Previously the overall strategy and work of The NSMC was heavily influenced by the DH who were the major funders of the organisation. Clearly the future direction and strategy for The NSMC has to be heavily influenced by commercial and business issues/opportunities.
- 14 Our business development programme identified four core areas of commercial opportunity for The NSMC. These are:

Training - Many of our clients, customers and stakeholders agreed that The NSMC have developed the most effective and comprehensive suite of training tools available anywhere in the world. We have further developed these tools and will be offering on-line programmes as well as selective personalised training packages for organisations. The later may be delivered as stand-alone courses or as turn-key training programmes which will be used to generate additional work.

Strategic Consultancy - We have discussed the strategic consultancy opportunities available to The NSMC extensively with other government departments, European and international organisations. The NSMC now has contracts with the Pan-American Health Organisation (PAHO), The Department of Health Hong Kong, the Scottish Government and US-AID with others in the pipeline. We see our role as strategic and will not undertake a large number of social marketing intervention programmes. However, we do expect to develop consortiums with other organisations and accredited individuals to deliver a number of behaviour change programmes where strategic value is identified.

Research - Our research tools and expertise (including the Social Marketing Research Centre which holds all the behavioural research conducted at a national level), the on-line cost benefit tool and our experience in managing and directing national pan-European research programmes will provide income streams moving forward.

Commercial advantage of our tools, products and events - The NSMC will continue to update and develop its range of products and resources which aid users with the implementation of behaviour change programmes to take commercial advantage of our position as a centre of excellence for behaviour change at home and abroad. Resources include the on-line toolbox, guides to procurement, conducting research, policy development and evaluation. We will also develop our portfolio of seminars and conferences, some of which will be implemented through our on-line delivery platform to maximise market reach and reduce associated delivery costs.

- 15 In addition to these core programme areas, The NSMC will generate additional income through:

Membership Programme

During the development of its business plan, The NSMC hosted a series of focus groups and workshops with stakeholders across government, the third and private sectors to determine if these groups saw a need for The NSMC moving forward. There was universal agreement that The NSMC should continue to play the lead role on assuring the quality of social marketing and considerable support for a membership programme as one means of achieving this goal. The NSMC currently has in excess of 3,000 regular subscribers to its e-bulletin and is globally recognised as a leader in the social marketing arena. A programme comprising individual, associate and corporate memberships is planned.

Grants

As a Community Interest Company, The NSMC would be eligible for government and non-government grant funding domestically and overseas. Given the considerable Government support for the establishment of Community Interest Companies there are several start-up/establishment grants available for new ventures that The NSMC would be eligible for. As a CIC, the NSMC would also be eligible for international grant funding for project work (research and delivery) from international development funds, philanthropic trusts etc.

B What should be the organisational structure?

The Present Situation

- 16 The NSMC is a business unit within Consumer Focus, an arrangement which has provided the organisation with the following benefits:
- Stability and governance;
 - Access to IT, HR, procurement and financial services;
 - High quality accommodation;
 - Access to a wider range of stakeholders
- 17 However, given the self-sustainability mandate, Consumer Focus and the DH agreed that alternative structural/organisational governance options should be considered. The Government's decision about the future of Consumer Focus has given added emphasis to consider organisational structures.

Investigating other organisational structures for the NSMC

- 18 Following an extensive review of structural options, it was recently agreed that there were three main options which would best meet The NSMC's operational needs moving forward. These were:
- The NSMC staying within Consumer Focus as a trading arm of the organisation;
 - The NSMC moving to be hosted by another organisation/government department;
 - The NSMC leaving Consumer Focus to form a separate legal entity. Options included a Community Interest Company (CIC) limited by guarantee (a form of social enterprise – see Annex A for further details), a charity and a private company (limited by shares);
- 19 The option of staying within Consumer Focus for the longer term was not considered favourable due to the Government's plans for the organisation. Also the restrictions placed upon Consumer Focus as an NDPB, e.g. marketing and recruitment restrictions are onerous for an organisation which will have to earn income to survive.

Transfer to another NDPB or government department

- 20 The NSMC held discussions with the DH and other key stakeholders to determine if there was another suitable NDPB to which The NSMC could transfer. In their current circumstances the DH were not in a position to incorporate The NSMC and they were also of the view that there were no other suitable government departments to which The NSMC could or should transfer.
- 21 Advice was also sought from Bates Wells Braithwaite and Strategic Investment Partners (strategic business planners). It was concluded that transfer to another NDPB would offer no more flexibility than remaining within Consumer Focus, and that the opportunity-cost of doing so was unfavourable. It was agreed that The NSMC needed to move out of the government sphere to ensure it can operate in a cost-effective and operationally responsive manner.

Private Company

- 22 A private company limited by shares would allow The NSMC to operate with the efficiencies necessary to increase the likelihood of ongoing sustainability but would not be in synergy with The NSMC's aim of "working with organisations across governmentfor social good.". Furthermore, T-sol and DH Legal Services would not be able to endorse this option as it would lead to insurmountable issues with respect to the transfer of assets, state aid and anti-competition rules.

Charitable Company Limited by Guarantee

- 23 This option was evaluated thoroughly with Bates Wells Braithwaite as it was seen to afford The NSMC considerable advantages including the obvious kudos and reputational benefits and the availability of tax reliefs (e.g. corporation tax and relief on premises). However, it was also noted that The NSMC would be subject to regulation by the Charity Commission and that one of the main benefits of charitable status - tax relief, would not be relevant as the NSMC is unlikely to attract donations from individual tax payer or companies.

Community Interest Company

- 24 Several forms of social enterprise structure were also considered, including Community Interest Company (CIC) limited by shares, co-operative and mutual. However, based on The NSMC's planned future activities and origins in government a CIC limited by guarantee was judged to be the best option for The NSMC from governance, legal and operational standpoint. For these purposes, the community means the global community and therefore a CIC can be involved in international business and still comply with its purpose. This would not be the case if The NSMC were to remain part of Consumer Focus or transfer to another NDPB.
- 25 Notably, the transfer of The NSMC to a CIC limited by guarantee was considered to be the most suitable vehicle for The NSMC by T-SOL, DH Legal Services and Bates Wells & Braithwaite (London's leading charity and social enterprise solicitors). Social Enterprise London was also of the view that a CIC limited by guarantee would be the best legal and operational structure for The NSMC moving forward. A CIC limited by guarantee is a form of social enterprise. It is a type of company registered with Companies House that allows organisations to ensure that their assets are dedicated to public benefit purposes without applying for charitable status. The key benefits are:
- Protection of assets against distribution to members
 - Ability to generate profits which can then be used for community interest projects
 - Increased requirements in terms of transparency and accountability compared to other companies
 - A requirement to have a clause in the constitution setting out the objects of the company
 - A check at the point of registration that the objects of the organisation are in the public and community interest, with subsequent changes being subject to regulatory approval.

C Would The NSMC be viable as a CIC?

- 26 This is a critical question and it is now proposed that we:
- carry out a comprehensive business analysis against which the future viability of the CIC is assessed;
 - develop a governance process to oversee the transition from Consumer Focus and separately the running and oversight of the CIC;
 - set out a timetable against which to monitor the milestones progress towards the setting up of the new organisation.

Ultimately, if NSMC is not viable as a CIC this would be a matter for those concerned to take appropriate decisions. Consumer Focus would not be involved although clearly we will want to take all appropriate steps whilst they are part of NSMC to maximize their prospects of success.

D How will The NSMC be funded between 1 April 2011 and the date at which it becomes a CIC?

- 27 Following a rationalisation of staffing at the beginning of the new financial year the NSMC will have sufficient capacity through earned income, on-going projects and newly agreed projects to cover its costs from earned income (i.e. not from BIS grant) during the period 1st April 2011 until 30th September 2011, (It is expected that the NSMC will transition out of Consumer Focus during this time period). NSMC

management is currently working with Graham Clark, Finance and Operations Director to finalise funding arrangements during the transition period. This will be reported to the March board meeting as part of the budget.

Resources

- 28 Further work on developing a new model for the NSMC and setting up a CIC will be funded from within existing DH grant. Ongoing work in 2011/12 would be funded from income received by NSMC. A provision for any closure costs already exists in our balance sheet, set aside from the contracts with DH and other customers ie not from BIS grant. This provision is reviewed annually.

This paper has had the input of the following organisations and people:

- Treasury Solicitors Department (T-Sol)
- Department of Business, Innovation and Skills (BIS)
- Social Enterprise London (SEL)
- Consumer Focus and The NSMC staff
- Strategic Investment Partners
- London Business School
- DH Social Marketing and Legal Services
- Bates Wells Braithwaite
- Within Design LTD