

Section Three - Finance, Governance and Management

This section seeks to highlight some of the key administrative and governance issues involved in running partnerships. It is aimed at providing an overview of these areas and to provide direction to more detailed sources of information

3.1 Partnerships will have many of the same management issues as single organisations; however, they will have the added complexity of having a number of partners to be engaged in the management process. It is therefore important that issues such as Human Resources, Financial Management, Legal obligations, and Risk Assessment are incorporated into partnership agreements (see section 2 for more detail).

- 1- Human Resources
- 2- Financial management
- 3- Legal obligations
- 4- Risk Assessment

3.2 Human Resources

3.2.1 Transfer of Staff - Where a partnership is not a separate legal entity, one of the partners must act as the employer in terms of holding the contract of employment. Employees effectively transfer their time to the work of the partnership under what is commonly known as a transfer of undertaking. The legislative framework for such transfers is the Transfer of Undertakings (Protection of Employment) 2006 (often known as TUPE). More information can be found on the CIPD website (<http://www.cipd.co.uk/subjects/emplaw/tupe>) and listed below are a number of different transfer scenarios where this legislation may come into force:

3.2.1.1 Joint Committees - Two or more authorities may arrange for joint provision of services and for a committee to be created to manage that arrangement. The consequence for staff will vary from one such arrangement to another. It may be convenient for one authority to take responsibility as the employing body for staff delivering the services on behalf of the other authorities. This is the approach which has been taken in the ESPO agreement.

3.2.1.2 Creation of a Company - A company is a body with a separate legal entity. There are particular rules governing the setting up of companies which are described as being "controlled" or "influenced" by local authorities. However, they remain independent of the local authority and will employ their own staff. Secondment may be used as a means of assisting the company in the early days of its operation. It is likely that, as matters progress, the company will wish to employ its own staff and that staff will transfer.

3.2.1.3 Consortium Arrangements - A number of authorities, or other bodies, may arrange to work together without giving up their autonomy in their particular areas of responsibility. In practice, one authority is likely to be

identified as 'lead' or 'host' authority and staff may be seconded to that authority.

3.2.1.4 External Transfers- Transfers of staff are likely to be covered by the Circular of the Office of the Deputy Prime Minister no. 03/2003. This provides that in cases of transfer 'in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the Regulations applied.' The right to membership of the Local Government Pension Scheme is not a right which will transfer under the TUPE Regulations. However, the circular provides that the new service provider will be required to ensure that staff has ongoing access to the Local Government Pension Scheme or be offered an alternative good quality occupational pension scheme. The authority will require that such alternative pension arrangements are the subject of rigorous scrutiny by a professionally qualified actuary who will compare the proposed arrangements with those of the Local Government Pension Scheme to ascertain whether they are broadly comparable. In practice, many new service providers will conclude that they should seek admitted body status to join the Local Government Pension Scheme.

3.2.2 Matters To Consider Prior To Any Transfer - The consequences of getting it wrong can be serious both in terms of management time and employee morale and can affect the success or otherwise of the project and the working relations with the other organisation. With this in mind, the following checklist has been prepared:

3.2.2.1 Consultation:

Employees - Enter into full and proper consultation with the employee/s concerned and the new section/department or host organisation well before the anticipated commencement of the proposed new working arrangement whether formal or informal and this also applies to any employee on maternity leave, sickness etc.

Trades Unions – It is important that the Trades Unions are always consulted prior to any transfer whether formal or informal e.g. internal secondments.

All consultations, whether formal or informal, should be confirmed in writing.

3.2.2.2 Employee Selection:

Is it obvious who is to be seconded/transfer?

It may be that the work to be transferred is currently carried out by a number of different employees in such cases operational Managers should (where possible) make use of any available staff time recording data to identify which employee/s is/are the obvious one/s to transfer. If appropriate ask the group if anyone has an express wish to transfer. It could be seen as a development opportunity. This may also avoid any unnecessary concern on the part employees.

The key here is to ensure that everyone potentially affected has sufficient information to enable him or her to make an informed decision as to whether or not to volunteer for secondment/transfer.

Any selection criteria must be clear and well publicised.

3.2.2.3 New Working Arrangements:

Ensure the employee/s fully understand what the new arrangement entails e.g. is it merely a temporary secondment to undertake other duties elsewhere within the County Council or is it a transfer to another organisation.

Where will the employee/s be working?

If it is at a new location is there an increase in travel time/cost?

Are there child-care issues which could be affected by the change in their circumstances?

3.2.2.4 Health and Safety:

This is also a primary consideration and it is essential that Managers are advised to speak to any host organisation prior to the transfer of any employee/s. Clearly it is not appropriate to identify particular issues in this document suffice it to say that agreements reached regarding Health and Safety responsibilities, which are shared in such circumstances, should be documented. This also applies to internal transfers i.e. within the County Council.

3.2.7.5 Exit Arrangements:

Jobs don't stand still, organisations change therefore, ensure that the employee/s understand this at the outset. Clearly in the case of a normal temporary short-term secondment the employee would expect to come back to their old job and continue as before. However, in the case of those working in a more formal arrangement e.g. partnership/consortium, this may not necessarily be short term.

3.2.2.6 Contract of Employment:

Remember, whether the transfer is formal or informal the arrangements must be confirmed in writing and should include information on precisely what the job is, its duration, hours of work, notice period etc.

3.2.2.7 Conditions of Service:

Is/are the employee/s to work at another location and with employees of other organisations? If so it will be necessary to review their conditions of service e.g. pay, lease car, hours of work annual leave etc., and including any workplace rules e.g. no smoking policies, dress code, Health and Safety etc. It is also

important not to overlook management responsibilities e.g. who is responsible for day-to-day supervision and allocation of work, and who is responsible for grievance and discipline including the composition of Panel Hearings. These may be among the more difficult to resolve. The usual starting point will be that the employee/s terms and conditions of service will apply to all major issues e.g. grievance, discipline, code of conduct, redundancy.

It is for this reason that consultation/negotiations should start as early as possible.

3.2.2.8 Data Protection:

When working with other host organisations it is important to remember that the transfer of information is not automatic. Care will need to be taken when wishing to discuss employees' roles with other organisations.

3.2.2.9 Pension Arrangements:

Dependant upon the nature of the transfer, its likely duration and the possibility that the employee/s job may no longer exist at the time they return, employees may wish to have an indication of the implications for their pension e.g. particularly relevant if TUPE transfer (see above).

3.2.2.10 Insurance:

This can be a complicated area and specialist advice may be required for each situation and agreement from the partnership's insurance company should be sought if in any doubt.

3.2.2.11 Training:

Ensure the Manager and more importantly the employee fully understand what is expected in the new role and whether any new skills will be required. If training is required this should, ideally, be provided prior to the transfer.

3.2.2.12 Monitoring Arrangements:

Ensure that regular contact with any staff member being seconded/transferred to work with other organisations is maintained, either by means of a formal appraisal or regular meeting. It cannot be emphasised too strongly how important this is both to the success of the arrangement and to employee morale.

During the course of any secondment/transfer personnel issues will inevitably arise. It is important therefore, that prior to employee/s secondment/transfer line management arrangements are put in place and that these are fully understood by all sides i.e. the employee and his/her manager and the 'other' organisation/s.

3.2.2.13 *Managing Return to Substantive Job:*

In cases of long term transfer e.g. more than one month, it is important to pave the way for an employee/s return i.e. ensure there is a programme of work upon their return and that other employees within the team know that they are returning.

As a matter of good management, Managers should be encouraged to speak to their employee/s at the earliest opportunity to discuss their transfer and assess what new skills have been acquired during their period of transfer.

3.2.3 Equalities Duty- Public authorities have a general duty to eliminate unlawful discrimination and promote equality of opportunity and good relations between people from different backgrounds.

This legal requirement extends to the work public authorities undertake in partnership with other organisations. The Commission for Racial Equality have produced more detailed information with regard to the race equality duty in their publication “Public Authorities and Partnerships” which can be downloaded from their website (<http://www.cre.gov.uk/duty/partnership.html>).

Where a public authority is working with a partnership involving private or voluntary sector organisations, it will need to take responsibility for ensuring that the partnership’s management arrangements meets the statutory equality duty and it must ensure that all partners are aware of this legal requirement. For example, the introduction and maintenance of race monitoring systems assist in meeting this duty. The Commission for Racial Equality recommend partnerships draw up a race equality strategy that details how they will promote race equality and ensure this strategy is regularly monitored and reported on. More information on equal opportunities and service delivery can be found in Section 4.3.

3.3 Financial Management

3.3.1 During the working period of the partnership it is important to ensure that the financial benefits envisaged for the partnership actually occur. It is also essential to monitor the effectiveness of the controls set up to ensure sound financial management.

3.3.2 There is a wealth of general information about financial management of organisations and the same principles of governance and financial accountability should apply to partnerships as they do in any large organisation. However, it is often more onerous to implement these controls due to the relationships between different partners. Additional areas to consider could include:

- The need for the nature of the financial relationship between partners to be included within a written agreement that is signed by all partners if the nature of the partnership means this is appropriate. This should include funding

obligations, arrangements for allocation of partnership liabilities in the event of the partnership ending and financial governance arrangements including roles and responsibilities for financial management.

- The need for key financial benefits to be incorporated into the partnerships service plans.
- These benefits are adequately reflected in performance indicators and targets.
- Actual performance is monitored on an agreed time basis.
- Partnership budgets are produced to an agreed timescale.
- Budgets are regularly monitored against actual expenditure.
- Corrective measures on performance and finance are considered and authorised at an appropriate level.
- The partnership has timely access to this information and explanations of important variances.
- Roles and responsibilities for financial management are clear.
- Partnership managers are made accountable for the systems they operate and they confirm suitable controls have been established.
- Audit trails exist and internal audit arrangements are established.
- Partnership accounts are produced and approved by external auditor.
- Costs of the partnership, especially sensitive costs such as management, are declared and judged reasonable.
- Financial performance penalties against the partnership are monitored and reported upon.
- Income generation arrangements are agreed and the necessary skills in place.
- Financial reporting arrangements to relevant agencies are in place.

3.4 Legal Implications

3.4.1 Partnership Agreement - Legal issues impact on almost all areas of forming a partnership and are covered briefly in Section 1.3.2. Due to the complexity and individual nature of every partnership, it is advised that specialist legal advice be obtained to ensure all aspects of company and business law are complied with. The partnership agreement is the primary legal document advice should be focused on the appropriateness of this. Generally, the more comprehensive this document is, the less likelihood of disputes arising during the life of the partnership. Partnership agreements are also covered in Section 2 but legal implications of agreements include:

- Is it a compulsory government initiative – in which case what are the statutory/regulatory duties and constraints?
- If it is a voluntary initiative, what powers will the Council be exercising?
- Consider whether approval/endorsement is required before negotiations commence with prospective partners, or bids for funding are submitted.
- When considering the timescale, establish any legal time constraints – e.g. periods of consultation (statutory or contractual) with staff or service users; minimum procurement timescales.
- Be mindful of the potential for inadvertently creating a contractual relationship with potential partners, particularly where they are spending

money on preparatory work. Be clear as to responsibilities and liabilities from the outset, and keep written records.

- Assess the degree of innovation and ground-breaking that is required – novel or complex legal issues may take additional time to resolve.
- For larger strategic and contractual partnerships it may be necessary for a pre-partnership agreement to be drawn up (sometimes called a 'memorandum of understanding' or 'heads of terms' agreement) which incorporates a detailed project plan.

3.4.2 Equalities duty – See 3.2.3 above.

3.4.3 Dissolution/Winding up –

3.4.3.1 A partnership that is not a separate legal entity may not require any formal notification to wind up. Subject to any agreement between the partners, a partnership is dissolved:

- *If the partnership is entered into for a fixed term, by expiration of that term.*
- *If the partnership exists solely to complete a task, by the completion or termination of that task.*
- *Where a partner provided notification of dissolution.*
- *Where a partner becomes bankrupt and the partnership agreement does not transfer business to the non-bankrupt partners.*

3.4.3.2 Partnerships established as a company may seek dissolution and to be struck off the companies register if, in the last three months if:

- it has not traded or otherwise carried on business;
- it has not changed its name;
- it has not disposed for value of property or rights that, immediately before ceasing to be in business or trade, it held for disposal or gain in the normal course of that business or trade; or
- it has not engaged in any other activity except one necessary or expedient for making a striking-off application, settling the company's affairs or meeting a statutory requirement. A company can, however, apply if it has settled trading or business debts in the previous three months.

A company cannot apply to be struck off if it is the subject, or proposed subject, of any insolvency proceedings (such as liquidation, including where a petition has been presented but has not yet been dealt with); or a Section 425 scheme (that is a compromise or arrangement between a company and its creditors or members).

3.5 Risk Management

3.5.1 Risk assessment and management is a very important part of partnership working. Essentially, risk assessment is the process of identifying all areas of harm which may affect the partnership, its stakeholders or the delivery of objectives, followed by an evaluation of the likelihood of the risk occurring and the extent to which that risk would harm the organisation.

3.5.2 There are two ways of looking at the partnership risk

- From the outside looking in – From the perspective of your organisation
- On the insider –From the perspective of the partnership.

3.5.3 This guidance note deals with the second scenario given that member of the partnership would have undertaken its own risk assessment prior to entering the partnership.

3.5.4 It is difficult to be prescriptive about the nature of the risk assessment require as this depends on the nature of the partnership. In addition each organisation is likely to have its own risk management procedures and it would be the expectation that the partnership would adopt the process used by the lead organisation. However, as a minimum the risk management process should;

- Identify the risks associated with delivering the service plan (or equivalent) and inherent risks associated with the partnership.
- Evaluate these risks including identifying the likelihood and impact and degree of acceptability.
- Identify mitigating actions.
- Monitor the risk and review the risks usually at least annually.

3.5.5 A useful background paper can be viewed here:



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3.6 Insurance

3.6.1 Some partnerships may require insurance separate to that of their constituent partners. Stand alone cover would usually be required if the partnership is deemed a separate entity and no cover is provided by the supporting authority. Partnerships will usually have to arrange their own insurance cover if any of the following are true:

- a. The partnership is a separate constituted body.
- b. Separate accounts are prepared for the partnership.
- c. The partnership holds a bank account in its own name.
- d. The partnership has a separate management structure separate from the sponsoring authority.
- e. The partnership owns assets that it must replace at its own expense (no matter how little).
- f. The partnership receives income/fees and pay income into its own bank account.
- g. The partnership receives income/fees for the services that the partnership provides.
- h. The partnership receives payment for the services it provides to persons/business/local authorities other than those involved in the partnership formation.

Any member or officer of the supporting authority acting as a representative on a partnership would continue to be covered under the authority's insurance but not the activities of the partnership.