Collaborative working

made simple

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Introduction

Working collaboratively with other organisations may help you to obtain additional funding or save costs on back office services. Some funders encourage collaboration between organisations in order to remove duplication or improve the quality and reach of a service.

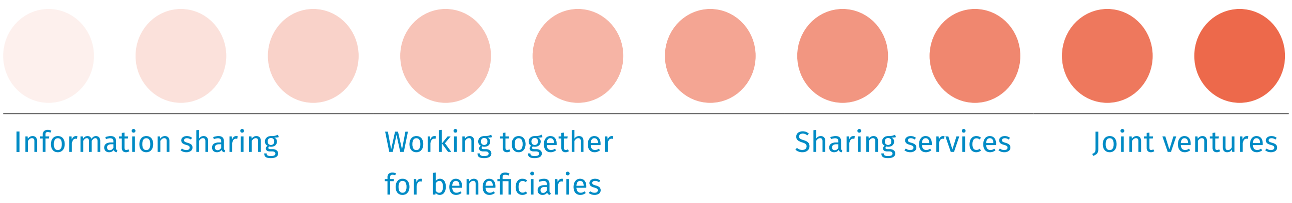
In addition, the Charity Commission reminds trustees of their responsibilities:

“Trustees of a charity have a duty to consider regularly whether the charity could be more effective at achieving its objects by collaborating or merging with other charities”

However, it is easy to talk about collaborating, but harder to do it. Time and effort will be needed to make sure that you are not risking your good reputation or entering into contracts that commit your organisation to far more than you expected. You will need to work at the relationships with the people in the organisations you are collaborating with and spend time initially setting up the arrangements.

So why should you bother at all? For many charities, collaboration helps them to increase the reach of their services or it gives them a way to improve the quality of their support services. In some cases, it will lower costs and overheads, but do consider that the extra time and effort may be greater than you expected. Collaboration can also be a significant learning process for your staff and volunteers as you work on activities with another organisation that has strengths in different areas.

Collaboration can take place at many different levels, with a low level of engagement at one end of the spectrum (e.g. sharing information) to a lasting commitment to delivering services together.



The financial arrangements will need to be clear and you will need to decide whether you need a separate legal entity, charge VAT on services supplied or treat the income as trading.

This guide will help you with models for collaborative working to deliver services and share back office functions.

Working together for beneficiaries

Working together with another organisation may allow your charity to deliver new or improved services for your beneficiaries. This may be particularly relevant if your beneficiaries have a range of needs and the collaboration means that beneficiaries will not have to seek out different organisations to obtain the various services to meet their needs. It may be the best way of accessing funding as funders increasingly expect one bid from a consortium so that they do not have to deal with multiple organisations but seek a one stop shop. Joint bids will often give you considerable competitive advantage and may allow you to take a higher risk on a new or untested method of working because you are sharing the risk.

But there are also disadvantages to working with one or more organisations which need to be considered carefully:

- Making decisions will be more complicated as you will have to make joint decisions.
- You may have to standardise working practices to ensure that consortium activities are of consistent quality – this may not fit the way you work.
- You may confuse supporters and your brand may be diluted, making it harder to raise funds.
- Setting up the consortium may be costly and time-consuming.
- You may be responsible for all liabilities if a partner fails.

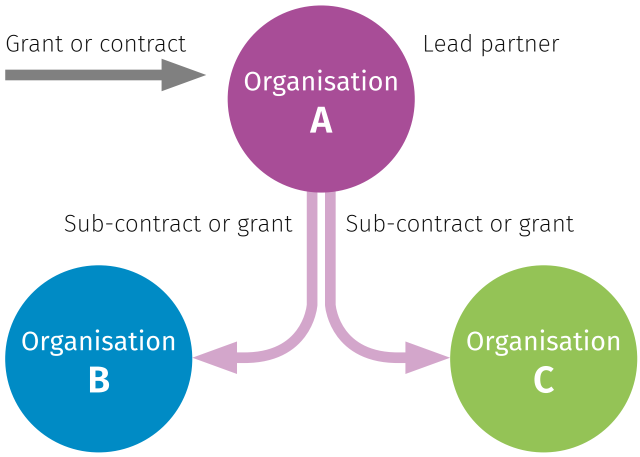
You can manage some of these risks by undertaking adequate due diligence (covered later in this guide) and setting up an appropriate legal framework in the collaboration agreement (also covered later in this guide).

There are also practical questions to be considered as you discuss the options and how you want to work together:

- Getting on together – different organisational cultures, attitudes to risk and processes can cause tension and friction.
- You need to decide on the overall structure and decide whether one organisation will be the lead partner and subcontract or whether you will be equal partners. As part of this you may wish to consider how accountability will be arranged.
- How you will manage potential conflicts of interest needs to be settled before you start the collaboration. The collaborative venture may lead to further work, which could be undertaken together or separately. You may also find yourselves competing against each other for other contracts.
- You need to consider if the work your charity is doing is within its objects.

Consortium bids

The most common structure for consortium bids is for one organisation to be the lead partner (Organisation A in the diagram). The lead partner holds the formal agreement with the funder and is therefore responsible for the delivery of the services. The lead partner should therefore reflect the terms and conditions of the main agreement in sub-agreements with the collaboration partners.



VAT may be an issue in contract funding. Depending on the nature of the service being provided, VAT may apply to the contract. You may need to get advice on whether the service is subject to VAT (before you sign the contract) as this is not always clear-cut and some services are exempt from VAT. You also need to consider the position of the funder – if they are providing a cash-capped amount of funding, then any VAT you charge will have to be found within the sum provided, as you would not be able to simply add VAT to the funding. This will effectively reduce the funding available to spend on services by 16% – for example if you had a grant of £100,000 you would only have £83,333 to spend on services after paying over the VAT included in £100,000. Although you could then recover VAT on some costs, if a lot of staff time is involved you will lose more in VAT on sales than you can recover on your costs.

A similar situation arises if the lead partner receives a grant, but awards contracts to the delivery partners. The delivery partners may have to charge VAT, which has not been included in the budget. Therefore it is wise to remain consistent with the source funding – if the main funding is a grant, then it is better to make grants to the delivery partners.

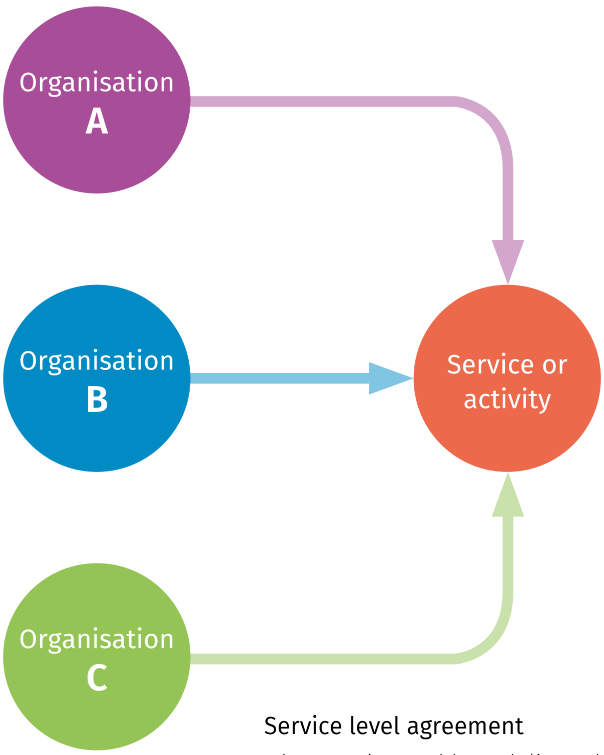
The lead partner should ensure that other members of the collaboration have similar responsibilities to theirs under the collaboration for delivery of services.

Joint activities

Activities undertaken collaboratively between two or more organisations can be structured in a number of ways. The following is not an overview of typical scenarios in the charity context.

Joint Activity, Not an Entity (“JANE”)

If joint activities are not organised through a separate entity, they can be organised in a number of ways. Often, each party to the activity will bear their own costs and contribute staff time. However, be careful if you need to reimburse each other – this may be considered a service in return for a fee for VAT purposes. You must also ensure you do not form a formal legal partnership, rather than just work together, if you do not mean to do so. Often the agreement will state that it is not the intention to form a partnership and you should take legal advice to ensure you are not forming a partnership if in any doubt.



Service level agreement
what service and how delivered

VAT issues

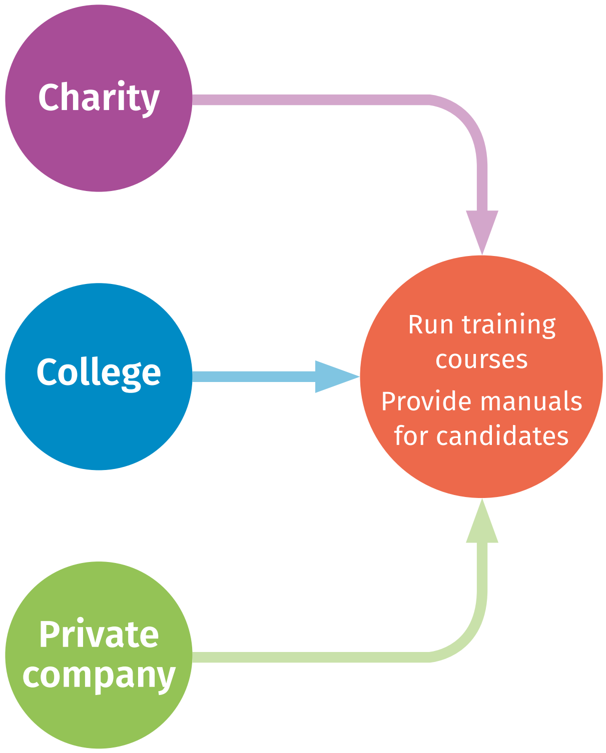
The activities of the JANE (which, rather confusingly, is referred to as a joint venture by HM Revenue & Customs “HMRC”) will have to be accounted for by the organisations involved. This may be by one of the venturers (the “lead venturer”) including all the joint venture’s activities with its own or by an apportionment of the activities between the venturers. You will probably have to agree how this is done with HMRC although there are various standard approaches that suggest what may be considered acceptable by HMRC.

- Where the JANE involves purchasing goods for resale and the lead organisation purchases and sells the goods, the lead organisation accounts for VAT on the goods in the normal way. Contributions by the other organisations towards the purchase costs and distributions of sales proceeds by the lead organisation are outside the scope of VAT
- If the goods are purchased by one organisation in the JANE but sold by another, the following treatment may be possible. The purchaser reclaims the input VAT on the goods. The seller charges output VAT on the goods. Payments to the purchaser are taxable supplies of services as are payments from the sales proceeds by the seller. HMRC will only allow this if they are satisfied there is no revenue risk involved
- For a joint supply of services HMRC may accept that each organisation in the JANE can account for output VAT on their share of the sales proceeds. They will only allow this if this share reflects the level of obligations and resources put in by each organisation and the profit share taken

and if there is no risk that HMRC will lose revenue as a result.

It may be safest to agree the method proposed with HMRC in advance.

Example 1 – collaboration between a charity, a college and a private tuition centre



Profit sharing	£'000	£'000	£'000
Income	500	200	300
Less: expenses	400	50	250
	100	150	50
Profit transfer	-	(50) $\xrightarrow{\text{TRANSFER}}$	50
Profit shared equally	**100**	**100**	**100**

In this example three organisations collaborated to provide training courses, training materials and exams for a vocational qualification. The charity produced the handbooks and wrote the exams. The college and the private tuition centre (which operated in different areas of the country) provided training courses using the handbooks and students sat their exams at these. So each had their own income and expenditure and some sales and purchases between each other. They had agreed to work collaboratively on this qualification and therefore share profits and losses equally. The transfer of profits to equalise them was outside the scope of VAT but sales and purchases between each other were subject to normal VAT rules. The organisations agreed with HMRC that each would account for VAT where necessary on their own sales and be able to reclaim their own purchase VAT subject to usual VAT recovery rules – so only to the extent they had vatable sales.

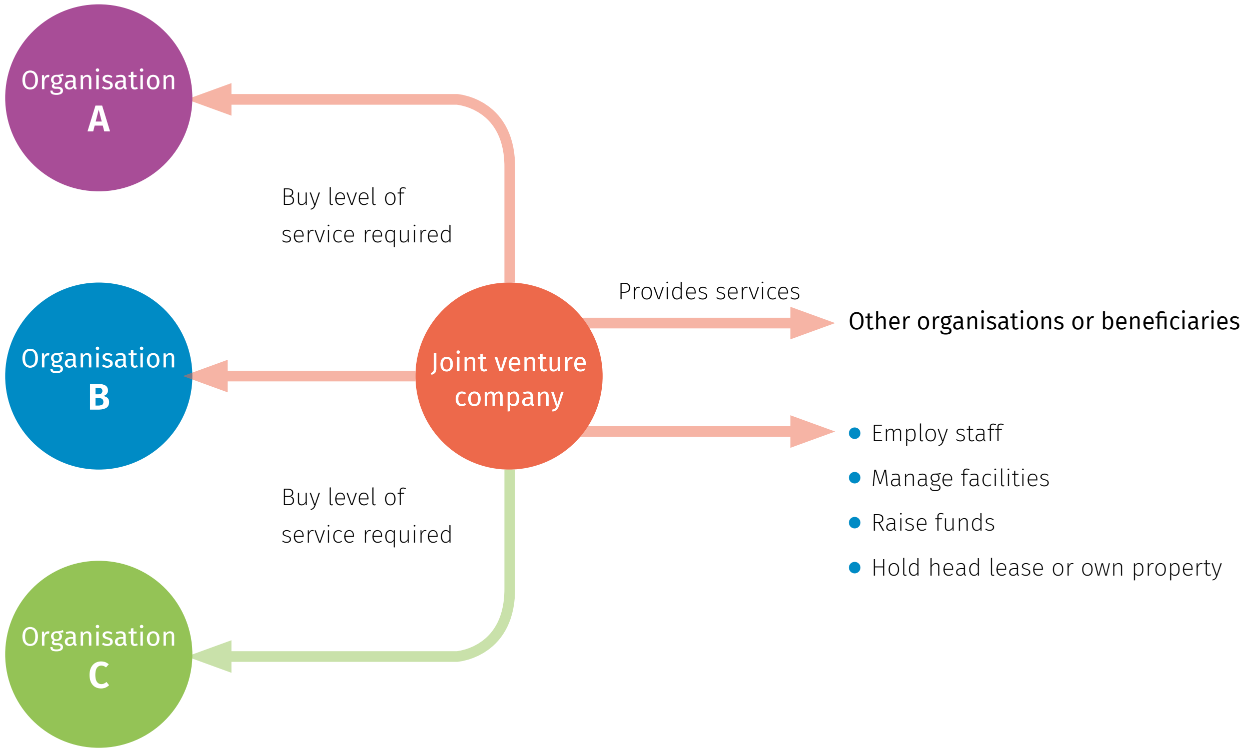
Partnerships

If the joint venture amounts to a partnership then the partnership is a separate entity for VAT purposes and must register for VAT if its taxable supplies exceed the VAT registration threshold. Supplies by the partners to the partnership may be subject to VAT as may supplies by the partnership to the partners. Transfers of profit from the partnership to the partners will be outside the scope of VAT as long as they do not amount to consideration for a supply.

The determination of whether or not a partnership exists is a complex area of law and there are differences between the law in England and Wales and the law in Scotland. It is not likely that you would choose this model but you should obtain legal advice if this is your intention.

Joint venture company

Joint venture is a loose term commonly used to describe a variety of situations in which independent venturers co-operate for some common purpose. Here we are referring to a separate company set up to undertake the joint activity. This is a more formal and longer lasting arrangement than a JANE. A number of organisations, some of which may be charities, set up and are members of a new organisation which may be a charity.



The new joint venture company will provide or sell services directly to beneficiaries or other organisations. As it is a separate legal entity it will need to register for VAT if it sells VATable services and it will need to employ its own staff, occupy property etc. It may receive funds directly itself or from the member organisations. Some or all of the staff may be transferred from the member organisations to be employed directly by the joint venture company.

It will need its own governance structure and conflicts and potential conflicts of interest with member organisations will need to be managed.

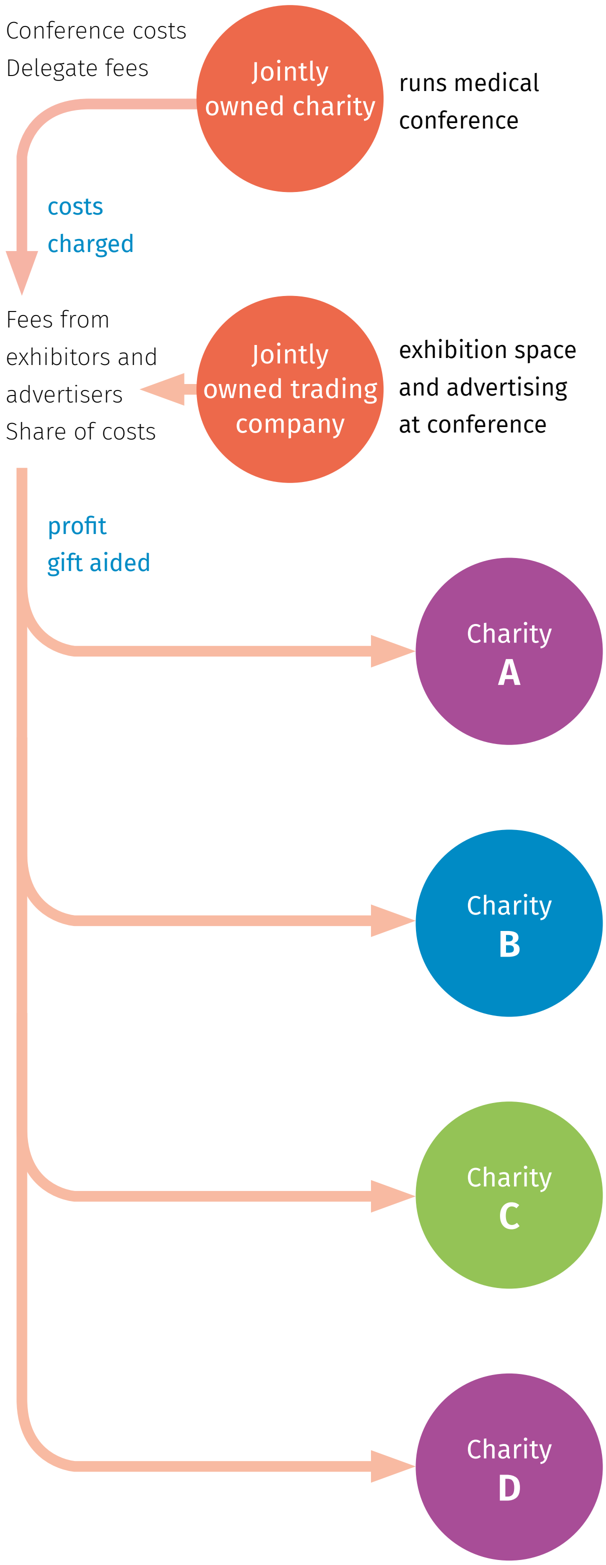
If it is not a charity then any profits can be gift aided to member charities to avoid a corporation tax charge in the company.

Sales and purchases between members and the joint venture will follow normal VAT rules.

Example 2 – collaboration between four scientific charities for a conference and exhibition using a joint venture charity and a joint venture trading company

In this example a number of charities working in overlapping scientific and medical areas organised a joint conference and exhibition. They formed a new charity and separate trading company to run these. The joint venture charity charged delegates to attend the conference, booked and paid for the hotel and speakers. The joint venture company collected fees from the exhibitors and paid a fee to the charity for use of the space at the conference. The conference was within the charitable objects but the exhibitors were not all related to the charitable cause so a trading company was also required.

The joint venture charity and trading company did not employ their own staff but one of the member charities provided staff and charged management fees to the joint ventures. The conference was priced so the charity broke even and the profits in the trading company were passed to the four member charities under Gift Aid.



Sharing back office functions

You may decide to collaborate by sharing services such as premises, facilities management, HR, ICT or finance. Just as with other collaboration, you can decide how far along the spectrum you feel it is appropriate to go. Also, you can try new arrangements in a low-key way and step up the level of collaboration if you want.

At the simplest level, there is no involvement in decision-making, but simply the execution of tasks such as the processing of transactions e.g. payroll. At the opposite end of the spectrum, you might be sharing whole functions, such as finance or HR. Here the person heading up the joint service does form part of management and does engage in management decisions. In the middle, you might be sharing a service such as advice on employment issues.

You can organise shared services in a number of ways:

- One organisation with spare capacity provides services to one or more organisations
- A number of organisations come together to form a shared service company
- A number of organisations come together to jointly outsource a service

Common to all these methods is the need to clarify why you want to share services. While you may be able to achieve cost savings, these may not be enough on their own. Other reasons may include an improvement in service, access to specialised skills or to manage peaks and troughs in workload.

In all cases, you will need to specify the service you need, including aspects of quantity and quality, in a similar way to any outsourcing arrangement. The service specification will help to price the service you are purchasing and enable comparisons. A typical service specification might include the following:

- General nature of the service to be provided
- Background information about the organisation requiring the service to provide context, including the importance of the service relative to core operations
- Further information about the size and quantity of the service, for example the number of staff employed, estimated number of transactions to be processed
- Description of the service to be provided e.g. 'accurate preparation of monthly payroll, providing payslips by 25th of each month'
- When the service will be required and frequency of service, detailing any time critical aspects
- Reporting arrangements, such as the content and frequency of any reports
- Fees chargeable, and the basis for any additional fees e.g. attendance at additional meetings
- Responsible individual for the provision of the service
- The extent of the responsible individual's authority and involvement in management decisions
- Attendance at meetings
- Who will be the lead individuals on each side for the purposes of the agreement
- Monitoring arrangements
- Termination arrangements – notice period required, transfer arrangements, ownership of documents

VAT issues

If Organisation A provides a service to Organisation B, then this is a business transaction and potentially liable to VAT. It is unlikely that any exemptions will apply as the nature of the service is one of management or administrative services, which will normally be subject to VAT. If Organisation A only undertakes a low level of activity of this nature, then it may not exceed the VAT registration threshold (£82,000 from April 2015). However, care is needed as all potentially VATable activities have to be considered when checking whether you need to register for VAT.

In most cases, VAT will be added to the fees. In practice, this will be similar to the situation many charities face with outsourcing. Although you may be able to fix or reduce the cost of obtaining a support service, the risk is that the overall amount the charity pays is greater than the cost of employing someone to undertake the tasks because of VAT.

Cost sharing group

You may be able to form a cost sharing group. The supply of services by a cost sharing group ("CSG") to any of its members will be exempt from VAT provided various conditions are met. The measure is mainly of benefit to sectors that carry out VAT exempt activities such as health, care, education, culture, sports, housing and financial services, and this includes those charities with exempt activities and also those funded by grants and donations.

For a supply to be VAT exempt under the cost sharing exemption it must meet all of the following conditions:

- It must be a supply of services (as opposed to a supply of goods).
- The supplier must be an independent membership entity (the CSG).
- The supply must be from that entity (the CSG) to one of its members.
- The members of the entity must all carry out VAT exempt or non-business activities.
- The supply must be directly necessary for the exercise of the member's VAT exempt or non-business activities.
- The CSG must merely claim from the member exact reimbursement of its share of the joint expenses.
- The exemption of the supply must not be likely to cause distortion of competition.

These conditions limit the extent to which this mechanism can be used and you will need to consider your activities carefully before establishing your collaboration on this basis.

Secondment of staff

Generally the supply of staff for a fee will be subject to VAT. However, in some situations relevant to collaboration it may be possible to second staff without a VAT charge.

Where staff are provided by one organisation to another in a collaboration for no consideration or significantly below cost, or if the supply of staff does not amount to a business activity, it is outside the scope of VAT and so no VAT is payable. If there is no consideration but staff are supplied as part of a broader arrangement where other services are supplied in return, that may be considered non-monetary consideration or a barter arrangement and so will be within the scope of VAT.

HMRC accept that the supply of staff between two charities is a non-business activity in the following limited circumstances: when the staff were employed in A's non-business (usually grant funded) activities and will be employed in B's non-business activities, and any payment for the staff by B to A is on an exact cost reimbursement basis with no addition for overheads or management charges.

Where staff are seconded, so retain employment rights in A but temporarily come under the direction and control of B, the "staff hire concession" allows secondment to escape VAT as long as B discharges A's salary obligations in respect of the seconded staff and the secondment is not carried out with a view to financial gain. For this to escape a VAT charge, HMRC require B to pay the net salary directly to the seconded employee and reimburse A for the exact amount of PAYE, NI and pension liabilities.

Due diligence

Before you enter any form of collaboration, it is sensible to undertake some due diligence, taking it further if you are considering a deeper form of joint working. You should undertake some due diligence even if you are a sub-contracting partner, as there is still risk that you will lose money or reputation if things go wrong. For collaboration to work, you need to know your partner, and so it is useful if trustees and staff at all levels build up contacts and relationships across both charities.

The information you should gather about new partners includes:

- Background information usually available from their website such as history, services they provide and who they work with.
- Trustees and how the charity is governed – some information available from Charity Commission website, such as filing record.
- Financial position, looking back through several years' accounts, but also by discussion. Questions you might ask include:
  - Do actual figures reflect budgets or are there large variances?
  - Do they recover their overheads on funded work?
  - Do they have financial KPI's (key performance indicators)
  - Do they own property, lease it, have mortgages?
  - Are there any liabilities that are not on the balance sheet?
- Organisation chart and people – how are they structured, who is responsible for management decisions.
- Experience of similar service delivery.

Collaboration agreement

In order to document the agreement between partners, you should draw up a collaboration agreement or memorandum of understanding. The precise form of this agreement will depend on the legal form of the collaboration and the scale of the partnership working. At a minimum an agreement to deliver services together would cover the following:

- Purpose of the agreement and the activities it is to cover.
- Roles and responsibilities of the respective parties, spelling out authority levels for decisions.
- The input of each partner in terms of expenses, staff and volunteer time and effort.
- Which costs and expenses will be reimbursed or counted as part of the collaboration.
- How any balancing up of costs will be handled, particularly bearing in mind VAT issues.
- Whether any assets are to be acquired, who shall have title to the assets and who will own them if the collaboration ends.
- Monitoring and reporting on both the performance of the each party to the collaboration and overall reporting to a funder if any.
- Communication between the collaboration partners and to the external world and the protocol for any external communications.
- If the collaborative venture is to have a separate identity, then agreement will have to be reached on how the name may be used and promotion handled.
- Intellectual property may be created as a result of the collaboration, such as training materials or a method of working. Organisations should protect their intellectual property, but agreement will also be needed on who owns it and how it will be shared once the collaboration comes to an end.
- The time period for the collaboration and how it might be extended, as well as provision for early termination and notice periods. Careful consideration is needed on how an exit or closure of the collaboration will be handled and whether partners will continue with the work in another form.
- An approach to dispute resolution should be set out in the agreement.
- The collaboration partners need to agree on how potential conflicts of interest should be handled, such as opportunities to bid for contracts which might bring a partner into competition with the collaboration or other partners.

An agreement to share back office services would cover the service specification and might be in the form of a service level agreement.

Conclusion

Collaboration can bring many benefits in helping charities achieve their objects and reach more beneficiaries more effectively. However, for it to be successful it requires good planning and a willingness to put in the required effort to make it work. So before you start and at regular intervals, consider whether the arrangement will provide:

- A fair share of effort and reward for each?
- Measurable benefits?
- Cost savings?
- Added value from collaboration?

You might also consider whether the collaboration is helping or harming your ability to raise funds or exposing your charity to new or unacceptable risks.

In order to have successful collaborative relationships, you need to get the following key aspects right from the start:

- Be clear on roles and responsibilities and set out in memoranda or other working documents who is doing what. For example:
    - who is reporting to funder?
    - who is insuring the venue, staff, volunteers etc?
    - who owns the intellectual property you may generate from the project?
- Communication channels need to be clear so that everyone knows what should be communicated, when, to whom and by whom. You do not want confused communications either externally or internally.
- VAT – does it apply or not? Make sure you have thought about VAT early on as it may erode many of the savings if you make a mistake and the penalties for mistakes on VAT are hefty. Ensure that you think about VAT when considering structures and ways of working. Take professional advice in good time if there is any doubt so that you can reorganise the agreement if this will prove effective.
- Exit strategy – what happens when one partner wants to leave the collaboration? It seems strange to think about how you will get out when you are planning the start of a collaboration, but thinking about exits will help you to get the structure and the agreements right from the outset.

Further information

Charity Commission

Choosing to collaborate: helping you succeed

www.gov.uk/government/publications/choosing-to-collaborate-how-to-succeed

Collaborative working and mergers (RS4)

www.gov.uk/government/publications/collaborative-working-and-mergers-rs4

Strength in numbers (RS24)

www.gov.uk/government/publications/strength-in-numbers-rs24

Work with other charities

www.gov.uk/work-with-other-charities

NCVO on collaborative working

http://knowhownonprofit.org/organisation/collaboration

Notes

Made simple guides

Made Simple guides are aimed at finance professionals and other managers working in charities. They cover technical areas such as tax and VAT treatments as well as information management areas and aim to provide practical guidance to busy managers and trustees in charities.

Made to measure

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