Legal structures for collaborative working

Tessa Hennessy Solicitor

6th July 2009

What we will cover

- Legal structures - what you are/need to be
- Types of collaboration
- What you need to consider
- Legal structures for collaboration
- Examples
- Getting started

6th July 2009

Legal forms

Unincorporated

- Trust
- Association
- Partnership

Incorporated

- Limited company
- Industrial and provident society (co-ops and community benefit societies)
- Limited liability partnership

Advantages of incorporation

- A legal identity separate from members
- Can enter into contracts in name of company
- Limited liability - protection for trustees/directors

Downside: “red tape”, expense

Context for collaboration

- Move from grants to contracts/tendering
- Funders wanting partnership working
- More charities considering collaboration
- Legal Services Commission awards of contract from 2010
  - Integrated social welfare law services
  - CLACs/CLANs

Spectrum of collaboration

- a loose informal arrangement
- a formal contract or joint venture agreement
- a full merger

Meaning of collaborative working and merger

- Collaborative working = joint working by two or more organisations on a project or venture in order to fulfil their purposes (while remaining as separate organisations)
- Merger = a formal merger of two or more organisations which involves the transfer or combination of assets (& liabilities) of 2 or more separate organisations. Either a new organisation is formed or one takes over the other

Different types of collaboration

- A buying group/joint ordering of supplies
- Joint campaigning, policy work
- Sharing back office functions e.g office space
- One organisation providing services to another
- Fundraising joint venture
- Formal partnership to deliver a contract
- Merger

Why collaborate?

- Improved or wider range of services for beneficiaries
- Financial savings
- Knowledge and information sharing
- Sharing risks in new projects
- Stronger voice
- Bidding for larger contracts e.g LSC

Why not collaborate?

- Benefits outweighed by time and resources invested
- Loss of autonomy
- Fear of losing supporters
- Cultural mismatch between organisations
- Diversion from core activities: mission drift
- Damage to organisation – reputation, loss of staff

What to consider – “look before you leap”

- Potential partners
  - trust, shared values
  - aims and culture of partner
- Resource implications – available funding?
- Risks – financial, reputational

Legal issues to consider

- Authority – does governing document contain necessary powers?
- Will collaboration further your objects?
- Geographical limits?
- Trustee duty of care/conflicts of interest
- Risk – “what if’s” e.g one party defaults
- Guidance from Charity Commission

Forms of collaboration:

1. Organisations remain separate to undertake joint work *or*

2. New “joint venture” body created

1. Organisations remain separate

- Written agreement/memorandum of understanding (state whether legally binding)
- Cover all aspects of the arrangement in the agreement
- Can be managed by a joint committee of trustees or delegation to a steering group
- Easier to end the collaboration
- Cheaper than setting up a new company

2. Joint venture company set up

- Creates a new jointly owned and managed legal entity which can bid for contracts
- Identity of parties kept separate
- Suitable if significant financial risks e.g trading
- Ring fences risk/protects assets of parties
- Governance shared – new board with representatives from each organisation
- Need for a joint venture agreement to cover practical arrangements/governance

What should go in a collaboration agreement – always put in writing!

- the parties and purpose of agreement
- when it starts/when and how it ends
- parties' obligations and responsibilities
- whether legally binding
- governance - lead partner?
- finance procedures
- monitoring/review/quality

What should go in a collaboration agreement (continued)

- what happens if one party defaults
- dispute resolution
- insurance
- management/communication
- staffing/employment issues
- how are rewards shared/losses apportioned?
- confidentiality/data protection
- requirements of funders e.g LSC

Structures for joint venture company

- Limited company – by guarantee or shares
  - most popular structure for JV
  - community interest company?
- Industrial and provident society – used by co-operatives; less common; more expensive to set up and operate
- Limited liability partnership
  - “in theory” but few examples of use by charities

Group structures

- Formal association of separate organisations working together to fulfil a common purpose
- Parent charity sets up other subsidiaries
- Inter party service level agreement or memorandum of understanding
- Parent company “hives off” non-core business

e.g operation of care homes in different regions

Federal structures

- National charity with local autonomous members which are members of the main charity
- Common name, brand and purpose
- Standard governing document
- National body exerts some influence over its members and offers advisory/support services

e.g Age Concern, MIND, CABx

Coalition structure

- Number of separate charities work together for a special purpose

e.g aid agencies working together through Disasters Emergency Committee (DEC)

Examples of collaboration

- Make Poverty History – joint campaigning by Oxfam (as host charity) and other large charities
- Stop Climate Chaos – new entity created
- Capitalise – a debt advice collaboration in London
- Advice Centres for Avon – association of over 40 individual advice centres

Merger

- New legal entity formed and both organisations merge into it; *or*
- One organisation merges into another

Merger - issues

- Authority in governing document
- Structures/purposes of merging charities
- Funding restrictions
- Cost of merger - do not under-estimate
- Timescale
- Employees
- Role of Charity Commission

Examples of merger

- Volunteering England – 3 charities with overlapping aims merged into a new charitable company
- Age Concern/Help the Aged - new charity from 1st April 2009 – new brand from 2010

Getting started

- Timescale – LSC/local authorities moving to single contracts
- Remember lead time on discussions
- Resources – NCVO, AdviceUK, Charity Commission
- Specialist help – legal, financial

Questions?

Tessa Hennessy Solicitor

Tel: 01865 723727

www.tessahennessy.co.uk