

Making Successful Partnerships

A self-help guide to making successful partnerships and consortia

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Foreword

This guide has been drawn together from various observations and discussions about the strengths and weaknesses of the consortia and partnerships proposed in various unsuccessful (and indeed successful) tenders to operate Community Legal Advice Centres (CLACs).

This paper brings together the experience of both ADP Consultancy and Matthew Howgate. ADP Consultancy is a well-established independent consultancy working in both the public and voluntary sectors. Matthew is a former lawyer to the Legal Services Commission. He chaired the CLAC tender evaluation panels and oversaw the assessment of each tender. He also mediated the many discussions about their strengths and weaknesses.

In addition, ADP has worked with a wide range of advice providers including Law Centres, independent advice centres and Citizens Advice Bureau as well as community groups and is aware of the challenges and fears currently faced by advice providers.

This guide accompanies a checklist of issues that organisations ought to work through before formally agreeing to work in partnership. This guide provides background details to each of the items of the checklist you need to complete.

This guide will:

- Take you through the things you should be thinking about from the very earliest stages
- Frame your discussions with potential partners
- Start to get you thinking about the right legal structure (though you will need appropriate legal advice), governance system and internal procedures for the partnership.

The guide does not give answers, it raises questions you should be asking yourself and each other. The answers will flow from your own discussions and from the more specific advice you receive on your own proposals.

The terms partnership and consortium tend to be used interchangeably. The issues in this guide apply, to varying degrees, to all forms of partnership from loose consortia through to mergers. The term partnership has been used throughout to cover all forms.

This guide provides generic guidance for organisations either considering or working in partnership.

Recognise your purpose

When constructing a partnership it is useful to have a clear purpose, and to retain that purpose throughout the partnership development. This should be based on your own knowledge and experience of what is needed and how best your users' interests are served.

If the partnership is constructed to secure funding, whether under grant or contract, you will need to make sure that it meets the requirements of the potential funders. If it doesn't then it will fail to achieve the desired funding and fail to achieve the purpose for which it was constructed.

You need to define separately -

- What each proposed member exists to do - this will help you identify the potential benefit(s) for the client group(s)
- What the partnership will exist for - to agree the shared aims and principles
- Why you are forming the partnership.

Be true to your clients and beneficiaries

If you exist to confer a particular benefit on a client group, then the purpose of the partnership and the reasons for forming it must help you to confer that benefit on those people. You can only work within the terms of your trust deed.

Be true to your aims and principles

Make sure that the members of the partnership share, at least at a basic level, the same aims and principles. Identify this core commitment. It will provide the backbone to the partnership and will provide the common ground when there are disagreements between partners, as there inevitably will be.

Carry the members' individual purposes and the purpose of the partnership through when you think about why you are forming the partnership.

A partnership built to secure funding, which doesn't best serve beneficiaries and clients and that doesn't champion the members' joint and individual aims and principles will, no doubt, fail to secure that funding and will collapse, often to the detriment of the beneficiaries/clients, partners and staff.

Remember the problem

If the partnership is intended to secure the future of two or more struggling organisations, don't lose sight of the fact that it would be easy to turn two or three struggling organisations into one larger struggling organisation.

The nature and construct of the partnership must stay true to the purpose. Economies of scale require difficult decisions on things like staffing, premises and projects, and funders expect to see economies of scale.

Other funding

Once you have a clear understanding of your individual and collective purposes, and the reasons why you are forming the partnership, consider how other sources of funding fit in:

- What is the purpose of any other sources of funding?
- Does this purpose conflict with the purpose you've identified?
- Will entering the partnership cause your organisation to fall outside the terms of any existing funding arrangements?
- Is there an overlap? Can any existing ring-fenced funding be used to deliver the partnership services?
- Do the terms of that funding allow you to deliver the services of the proposed partnership?
- If so, do you need to discuss the new arrangements with those funders?

Is it allowed?

When your organisation came into being there would have been some form or constitutional document. Maybe it was a Trust Deed, maybe it was an Articles of Association and Memorandum of Understanding but, either way, that document will set out the rules within which you operate. Any partnership must be within those rules.

Of course some of those rules will hark back to your aims and principles. They will state the purpose of your organisation or business. What if your proposed partner has a different purpose? How does that affect any potential partnership?

Of course it's not just your own constitution that contains rules affecting potential partnership. In the context of legal advice providers, there are also the Solicitors' Practice Rules, which limit the way in which solicitors' firms can enter partnerships with non-solicitor organisations. Rules 4, 8 and 9 have particular impact on consortia.

Make sure that you consider the legal constraints on the proposed partnership.

Be careful not to progress a partnership that is forbidden under your constitution or implement structures and systems which breach conduct or other rules.

Due Diligence & Honesty

Successful partnerships are built on honesty and transparency. It is essential that all of the potential members of the partnership are willing to be open with each other. This will mean the free and frank disclosure of all information necessary for the partnership to succeed. However, be careful to only disclose information where you are allowed to do so and only when appropriate.

Before exchanging information, consider whether it is:

- Subject to legal professional privilege
- Commercially sensitive (so that disclosing it may affect how someone prices their goods or services)
- Subject to the Data Protection Act - if in doubt, check on the Information Commissioner's website
- Anything that a person, such as a member of staff, would reasonably regard as confidential.

Information about your clients or staff may be confidential and subject to the provisions of Data Protection legislation and information about your financial situation may be commercially sensitive. Strong partnerships require openness and honesty, but also require reciprocity and responsibility. Remember that you may want to negotiate confidentiality agreements with potential partners to restrict how information and data can be used.

The information members will share depends on the nature and extent of the proposed partnership. It is likely that you will have to consider sharing information about:

- Values, purpose and aspirations
- Each member's financial situation, including liabilities, assets, investments and income
- Internal policies and procedures (see below)
- Staffing levels, salaries and overheads, and liabilities, including impending tribunal or other proceedings
- Performance and quality-related data including prosecutions, complaints, proceedings and investigations
- Computer, telephony and IT systems
- Any other partnerships/consortia in which you are involved.

The Client Journey

Keep the client journey at the forefront of your considerations. Consider how the client will experience the partnership.

Most funders will be more interested in what the partnership means for clients than about what it means for you. Moving a client between multiple organisations can very easily end up becoming messy, confusing and unhelpful for the client. A poor client experience can undermine the partnership and ultimately weaken the individual partners.

In designing your client journey, consider some key elements of that journey, for example, branding, the potential for conflicts of interest, the way the client's information is shared around the partnership, and the use of technology in managing her or his case.

Branding

Will the client see you as a partnership, a group of individual organisations working together, or as a single organisation? These may seem minor issues but can often cause friction within partnerships and confusion for clients. It may be important for funders that the client sees a single organisation, and indeed it may be less confusing for clients, but your own professional conduct rules, organisational memberships or loyalties may lead you to maintain separate identities. How will you maintain your separate identities but still offer a journey that makes sense to the client?

Consider what should appear on your stationery, websites, leaflets, advertising campaigns, the little plaque outside the door:

- Do you need to develop an entirely new corporate presence for the partnership?
- How will you maintain your existing brand recognition and value?

When resolving such issues, remember the purpose of the partnership.

Conflicts of Interest

This could include conflicts between the partners or between clients or where different partners represent different parties to the same dispute.

Consider:

- The potential for conflicts in the legal sense, as defined in say the Solicitors' Code of Conduct

- The risk of conflicts in a less defined sense, such as between the wider interests of members
- How to design systems that ensure that conflicts don't arise, by checking whether opposing parties are represented or advised by partnership/consortium members
- What action to take when conflicts arise, between clients and members.

It is important that you have clear procedures in place to swiftly identify where conflict does or may arise and to deal with those conflicts. This may mean having clear rules as between partners or some binding dispute resolution process (see below). It may, of course, mean that clients have to be turned away or that “conflict fences” have to be developed between partners.

This has knock-on effects on issues like shared resources and data sharing.

Data Sharing

Advice providers often hold deeply sensitive data about individuals and there is a balance to be struck by partners in ensuring that sufficient data is shared to complement the client journey whilst ensuring that no partner has access to data or information that might prejudice the client.

Consider:

- What data the partnership members will share
- Whether the extent of data sharing is compliant with the partnership member's individual Data Protection and confidentiality obligations
- How to restrict access to information where there is a potential conflict of interest or where different parts of the partnership are lawfully advising opposing parties in a the same dispute
- The effect of legal professional privilege
- The wording of your data protection notices and client care letters
- Introducing systems to get clients to consent to data sharing among members.

Diaries, Appointments and Case Management

If a client is progressing between the various members of the partnership, how will you manage the diary system? Consider whether a partnership member can use a web-based or centrally located computer diary and appointments system to make an appointment for the client to see another.

How will this look to the client?

Will the client have to go from one physical location to another to access the

full range of services offered by the consortium and, if so, where will his or her files be kept?

What will you do to ensure that the various advisers that he or she sees, whilst balancing the data security issues discussed above, don't ask the client the same questions?

Technology

Consider how to use technology to support your approach to the client's journey:

- Can you use an electronic case management system? Will your existing systems work together?
- Do your telephone systems work together, or can they? How will you put calls through from one partner to another? Do you need to consider having a single switchboard and messaging service?
- Are you using the same operating systems and the same versions of any necessary email, word-processing and data storage systems?
- Can all members of the partnership open documents sent by others?
- How will you provide management information or partnership claims information to providers like the LSC?
- What is the impact on IT support contracts and software licences?

Quality Standards

The most important thing for any client is the standard of service they receive, regardless of which member of the partnership delivers that service. It may be that various members subscribe to various quality standards and therefore operate, for instance, different complaints procedures. A complaint to one may have to be resolved in 24 days whereas the same complaint to another may have to be resolved within 28 days. Make sure that all members are operating the same client-focused procedures. It may be that compliance with a single quality standard, like the Specialist Quality Mark, is necessary to secure an LSC contract.

Consider:

- What quality standard the partnership seeks to meet
- How to ensure that all partners achieve that standard
- How to support smaller and newer members as they improve their standards
- How to share expertise and systems to the benefit of all partners and thus to clients
- What the partnership will do if a member can't meet the desired standard, despite getting support.

Governance

Back up the design of your client journey with a governance system that both supports it and allows it to grow, either organically or because your funders ask it of you.

It is very easy, particularly in loose consortia, to create governance structures that seek to maintain the full decision-making autonomy and processes of each of the member organisations. This can mean that key decisions may take many weeks, if not months, to make as they bounce back and forth between the managing committees/trustee boards of the various partners. This can be hugely frustrating both to the partners and to funders and potentially damaging to clients.

Effective and dynamic governance may mean abrogating some of your existing decision-making processes or delegating decision-making authority. True partnership is about surrendering some of your own independence for the good of the partnership as a whole - it is about compromise. However in reaching these compromises and in delegating powers it is essential that you fully define the extent of those delegated powers.

- **What can the partnership management decide on behalf of individual members and what must be referred back to the individual members?**

Many funders will look for a lead member of the partnership with which to contract. Others may contract with all members of the partnership but still look for one member to speak for it or for there to be a contract manager within it taking responsibility for the day-to-day operation of the contract.

Of course appointing such an individual / lead partner may be fraught with politics. It is essential to make the decision on practical grounds.

- **Which organisation is best placed to take the lead - which person has the right skill set to manage the contract? It may not always be the largest organisation or indeed the most dominant individual.**

Aim for a governance structure that allows for decisions to be taken quickly but which provides appropriate protection to all consortium members. There is no point in the partnership making decisions which some of the members will not or cannot stand by.

Problem and Dispute Resolution

Have in place arrangements to swiftly and fairly deal with problems and disputes as they arise. Focus on the purpose of the partnership should form the core of these procedures.

Design detailed written dispute resolution procedures, including sanctions, for situations like these:

- Where the lead member appears not to be allocating work fairly to other members of the consortium
- Where a member is purporting to agree arrangements, or present positions externally, that other members are uncomfortable with
- Where a member of the partnership isn't pulling its weight or is performing below the appropriate threshold in terms of quality or quantity of work.

When designing the procedures for resolving disputes, ensure that:

- In difficult and sensitive situations, the individuals involved have to take action early, to prevent disputes from escalating
- That There is recourse to external mediation or arbitration where necessary
- The appropriate sanctions, including expulsion, are provided for;
- The procedures are fair and defensible in the event of legal challenge and external scrutiny.

Termination and Contingency

From the very beginning, think about the very end. Make plans that cover the following eventualities:

- The end of the contracting period and/or funding arrangement
- One or more members wanting to bring the partnership to an end
- A member of the partnership falling into financial or other difficulties.

As far as possible, try to anticipate and provide for situations like these, making provision for:

- Partnership resources
- Staff whose jobs are lost and
- Those who transfer with TUPE rights to another organisation that wins the contract that the partnership was previously performing;
- Previous members who lose staff in that situation.

The procedures should ensure that, during the life of any contract or project, you could, where possible, continue to perform that contract or project even if one or more of the members ceases to be in the partnership.