

Collaborations – ask the right questions at the outset

Collaboration can be undertaken for many reasons, and sometimes in haste. If you don't do your early planning properly, you can leave unresolved issues which can fester and later debilitate what you set out to achieve. Tight deadlines may also lead partners to side-line the more complex issues which they then find difficult to address once the focus of effort has moved on to the delivery phase.

You should be clear from the outset on the key fundamentals:

WHY are we doing it?
WHO should be our partners?
WHAT do we need to know about our partners?
HOW will we structure and make it work?

Factors to be considered during talks of a collaboration

1. Be clear on the rationale

There could be more than one purpose. The collaboration may be time limited for a particular project or a framework for a continuing relationship.

2. Partners

Your focus should be on who can best help you to achieve your objectives. Do not exclude the possibility of working with the private or public sectors or investors (or indeed a combination of them).

3. Know yourself

Are your charitable objects wide enough for the collaboration? If not, you may need to apply to the Charity Commission for approval to amend them. You must not

allow your resources to support the activities of other organisations which are outside your objects.

4. Confidentiality

Get all the partners to sign a non-disclosure agreement before you start disclosing any sensitive information.

5. Know your partners

Do due diligence but keep it proportionate to assess risk and ability to deliver to your expected standards. Highlighting reputational risk and how to manage it can be a key concern.

6. Key assets

If success is dependent on being able to use assets provided by a partner, make sure they own them or have necessary rights to make them available. You don't want to be accused of infringing the intellectual property of a third party.

7. Risk and control

How you decide to share risk will help define the levers of control held by each partner. Be clear whether you have liability for default by another; that might also take you outside your objects.

8. Governance

You must have a robust system for decisions, management, reporting and monitoring. If you create a "board", they should be entrusted to act, as speed could be of the essence. Decide on the appointment process to the board.

9. Funding and shared resources (e.g. staff and intellectual property)

What does each partner supply at set up and ongoing? Could there be binding calls for future funding? Beware of exposure to losses by giving very wide indemnities. If staff are seconded, how is the employer's risk shared?

10. Conflict of interest

Identify early any serious conflict situations and agree a policy for managing these.

11. Safeguarding against failure

Never the most popular topic! However, you do need to consider how you can preserve the collaboration against a partner failure, and of course protect your beneficiaries. Have a system for identifying and managing problems early – relying on the power to expel may not resolve the problem.

12. Evolution

Building flexibility to allow your collaboration to evolve, e.g. to take on new partners or projects.

Finally (almost) Legal structures

Only when you have identified your key features should you decide on what structure would achieve this. There are various options, here are some examples that you might want to consider:

- Lead contractor and sub-contractors where one organisation takes the ultimate control and risk. That risk is then shared with sub-contractors to the extent of the service they agree to provide.
- A contractual joint venture – where the advantage of flexibility may outweigh the downside of not being able to ring fence risks.
- A separate company – where the partners want to ring fence risk or to build up a trading history. The board would have statutory responsibilities which may lead to more robust governance.

Finally

Don't forget VAT, tax and accounting! These issues are just as equally important in the melting pot – so speak to your accountants early in the process to avoid any unwanted surprises.

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