

SERIES OF ARTICLES FOR MUNICIPAL JOURNAL ON SHARED SERVICES

Article 2 - The Collaborative Model By Judith Barnes

This article is the second in the series of articles on shared services. The first explored the policy context and was called "Making Joint Working and Collaboration a Reality". This article explores the collaborative models available to local authorities to share services with other local authorities and health bodies.

Local authorities working together and delivering services on behalf of other authorities is not new, for example, a number of highways agency agreements date back years and there are a number of authorities sharing service provision from waste through internal audit, procurement, joint purchasing and customer relationship management services. Recently we saw the advertisement of a Joint Head of Legal Services for Boston and East Lindsey District Council and numerous councils now collaborate to provide legal services to each other.

There are a number of models which are available within the collaborative umbrella, including:

- sharing assets between local authorities or authorities and other public bodies, ie neighbourhood premises for local authority and health care services;
- seconding of staff under sections 112 and 113 Local Government Act 1972 to other local authorities and health authorities and/or joint appointments on a full time or part time basis. Whilst employees remain employed by the original authority for pensions purposes, they are treated as employees of the authority to which they have been seconded for decision-making purposes;
- delegating a function to another authority or group of authorities, essentially authorising a committee or an officer of one authority to perform the function on behalf of all of them; or
- creating a joint committee with its own constitution, so that functions are delegated to the committee and then may be sub-delegated to a sub-committee or officer of one (or more) of the authorities.

Collaboration may involve some or all of these ways of working.

The powers to undertake these latter two forms of joint working are contained in ss101/102 Local Government Act 1972 and ss19 and 20 Local

Government Act 2000 (for executive functions). For these purposes the definition of authorities includes town and parish councils and so these models could assist if the Government delivers the "double devolution" promised in the June White Paper on the future of local government. For joint arrangements and pooled budgets with Health bodies the powers are contained in s31 Health Act 1999 and the Regulations made pursuant to that section.

These models should be distinguished from the statutory joint authorities created on abolition of the metropolitan counties and the contractual model, where essentially an authority provides another authority with services under a contract, eg under the Local Authorities (Goods and Services) Act 1970. No new legal entity is created - even with a joint committee - unlike where a company is established to deliver joint services or a joint authority (as these are separate statutory corporations and will be examined in a later article).

A key distinction is that collaborative arrangements are reliant upon administrative law, rather than contract law. Any collaborative arrangement should still be documented as to how costs are shared and who will be responsible for what, however; we would recommend a high level agreement in the form of a Memorandum of Understanding, Concordat, Protocol or Accord rather than labelling it as a "contract" to avoid the connotation of a contractual arrangement which then brings in public procurement issues, different VAT treatment and other complications. (Clearly the details must be analysed to determine how the substance of the arrangements should be treated in law, as there are risks involved with any of the models.)

Whilst an administrative arrangement relies upon public law it is important to be clear about operation of the shared services - how long are they intended to last? How will costs be shared? What happens if one partner wishes to withdraw - should the whole arrangements be reviewed? What are the remedies for non/poor performance - arguably this is withdrawal rather than the liquidated damages type provisions more commonly found in a contract - or should there be active management of performance to ensure some improvement in the near future? What happens to staff and assets in the event of withdrawal/termination should also be covered - for example should staff be offered priority redeployment opportunities in each of the partner authorities with a view to minimising costs and liabilities in the event that arrangements cease?

So why choose an administrative arrangement? Some of the advantages include:

- relative informality;
- flexibility of structure and operation;

- relies upon trust and a “partnering” approach;
- usually outside of EU procurement rules;
- the arrangements allow member/political involvement, especially where a joint committee is involved, or reporting lines exist through members in respect of delegated functions;
- authority to take decisions about the shared services may be delegated to member(s) or officers so it can be unbureaucratic (though this is not always the case);
- officers from other authorities may be authorised to take decisions on behalf of the host or partner authorities;
- staff remain local authority employees; and
- the arrangements allow sharing of knowledge, skills, systems, procedures and expertise (which should bring economies of scale and better value for money).

Sometimes authorities come together through some form of joint committee in order to jointly procure a major project or facility. This structure enables them to agree between themselves how they will relate to the third party provider once a contract is awarded. Essentially, this gives the local authorities a forum in which they can determine how they will interface, which authority (or authorities) will administer the arrangements on behalf of them all and how income and expenditure will be dealt with. This body may also be used to monitor and manage the contract within agreed parameters.

It is important to ensure that relevant legal and other considerations are built into the process from an early stage. The appropriate vehicle should flow from the objectives of the partner authorities and how they consider the arrangements should operate in practice rather than starting with a model in mind which may not best meet their needs. Overall, we consider that because the arrangements are built on the trust between the partner authorities and an administrative law base, they should be kept straightforward and not be unduly lengthy or complex.

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