



A Collaboration Toolkit

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This publication is a simple guide for local authorities wishing to embark on collaboration and joint working and covers the major technical issues that will be faced by collaborative projects.

Contact

Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy. It represents the 22 local authorities in Wales, with the 4 police authorities, 3 fire and rescue authorities and 3 national park authorities as associate members.

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Contents

The purpose of this briefing note is to provide concise information on the major issues that will be faced by collaborative projects. The Toolkit aims to provide initial answers to the following questions:

1. What is the point of local authorities collaborating?
2. Who should we collaborate with?
3. How do we control collaborative arrangements?
4. How do we manage the performance of a collaboration?
5. How do we scrutinise collaborative activity?
6. How do we engage employees in collaboration?
7. How do we pay for collaboration?
8. How do we make it happen?

Background

Local authorities in Wales have been working together, collaborating, since they were first established in the 19th century. The extent of collaboration has increased over the past few decades and a Collaboration Compendium maintained by the WLGA is a useful reference source¹.

The Compact for Change² agreed between Welsh Local Government and Welsh Government in 2011 will lead to some core collaborations being rolled out across Wales in a consistent manner, and features a framework for a new relationship between the Welsh Government and Welsh local government.

This toolkit is designed to assist local authorities in designing collaborations. It is about the 'How'. The toolkit complements the WLGA's more technical 'Legal Guidance for Collaboration' commissioned from Trowers and Hamlins³. Wherever there are questions relating to the legality of a collaborative arrangement it is recommended that consideration is first given to the Trowers and Hamlin guidance and that further specific advice is sought as the need is identified.

The toolkit is about collaboration between different local authorities. There are huge gains to be made from local authorities collaborating with health, police, the voluntary and business sectors but the issues relating to these collaborations need to be looked at specifically. The WLGA is also producing specific guidance for Members, and guidance on project and programme management.

The Toolkit is not intended to be a definitive guide, or to be used as a substitute for specific legal, financial & personnel advice on individual projects.

¹ <http://www.wlga.gov.uk/english/regional-collaboration-compendium/>

² <http://wales.gov.uk/topics/improvingservices/publicationsevents/publications/compact/?lang=en>

³ <http://www.wlga.gov.uk/english/publications-regional-boards/wlga-legal-guidance-for-collaboration/>

1. What is the point of local authorities collaborating?

The truth is that local authorities collaborate for a range of different purposes. It is very important that in any intended collaboration there is a clear and agreed statement of what the purpose of the collaboration is. Too many collaborative projects have foundered because participants have not been open and honest about what it is they want to achieve.

The potential purposes of a collaborative activity include:

- *To share experience and align the activities of organisations which continue to work separately*

Professional and political networks have a long tradition of coming together to share experiences and inform the practice of others. This is not a structured collaboration but much has been gained over time by learning from each other and ensuring that the activities of any one organisation complement rather than duplicate the activities of another.

- *To have joint plans*

Arrangements may be in place for several authorities to develop and agree a plan which they jointly agree and which may inform or have precedence over more local plans. There are transport plans, land use plans, economic plans which fit this purpose.

- *To have shared procurement*

Arrangements may be in place for several local authorities to procure infrastructure, goods and services on a joint basis. Such arrangements may allow authorities to procure at lower cost and, more significantly, to better develop and manage supply chains. There are purchasing consortia in place in north and south Wales. There are specific joint procurement arrangements in place for waste infrastructure and social care.

- *To have shared delivery*

Where some parts of a service require specialist expertise or where there is an economy of scale arrangements have been put in place for such parts of services to be delivered across several local authorities. Specialist highway resources and school improvement services have long been provided on a shared basis and are now being further developed

The overwhelming purpose of collaborative arrangements is that they allow us to keep local government 'local'. We can have local authorities which are small enough to be close to citizens and communities if they work together to plan for larger geographical areas, to procure in global markets, to deliver specialists services. One of the most effective local government systems in the world is that of Finland which has over 300 local authorities with an average population size of 15,000; they deliver schools, colleges, health and social care effectively because of the hundreds of diverse collaborative arrangements that they have put in place.

2. Who should we collaborate with?

It depends on the purpose.

- If the aim is to produce a transport plan the collaboration will be around transport corridors.
- If the aim is to plan for an economic region then the group of local authorities will need sufficient an economic agglomeration to attract high value business support enterprises in areas such as digital communication, financial services, scientific innovation; populations in excess of a million appear to work best.
- If the aim is to share a Director of Social Services or Head of Highways and Infrastructure and Emergency Planning for example then a collaboration between two local authorities will often suffice.
- If the aim is to plan and commission integrated health and social care then the boundaries of the Local Health Board would be the most appropriate.

The Welsh Government has expressed the view that collaborations should be structured around the boundaries of the Local Health Boards or aggregations thereof. In the Compact local government agreed to give consideration to such boundaries but to work also on other boundaries where that better fits the purpose.

3. How do we control collaborative arrangements i.e. the 'Governance' Question?


No collaboration alters the fact that in law and in popular expectation each local authority remains responsible for the delivery and quality of service provided. Each local authority will need to ensure that it retains control over the standards of service that it sets on behalf of its citizens.

In any shared arrangement it is important to ensure that there is effective governance, i.e. to ensure that the arrangement:

- is lawful with decisions made correctly by properly authorised decision makers;
- is well managed and sustainable within the resources available to it;
- achieves the quality and quality of service agreed by the participating local authorities;
- is subject to effective scrutiny.

The potential arrangements for the governance of a shared activity are many and varied. The appropriate form of governance will depend on the purpose of the shared arrangement. All too often a collaboration project starts with a debate about governance rather than an agreement of purpose; it ought to be the other way around - the purpose will inform the choice of appropriate governance.

For the purposes of this briefing the different forms of potential governance will be described as

- An informal network
 - A Shared Appointment
 - A Contractual Arrangement
 - Delegation of Functions – Lead Authorities and Joint Committees
 - A Special Purpose Vehicle
 - A Joint Venture
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Section 7 -12 of the WLGA Trowers and Hamlins Legal Guidance provides details of the governance models. This Toolkit provides just an overview.

An Informal Network

Many collaborative arrangements are about sharing experiences and plans so that we can learn from good experience and potentially align the activities of separate organisations in support of a shared objective. There will be no shared decision taking: all formal decisions are taken separately by each participating organisation according to their own separate governance arrangements. There is no shared organisation. Many professional networks have this characteristic. The WLGA Regional Boards involving Council Leaders have the same characteristic.

A Shared Appointment

It is possible for two or more local authorities to fund jointly a single appointment. This may be a specialist officer, perhaps an ecologist or an equalities officer, who is charged to provide a service and advice to more than one local authority. It may be a Head of Service or Director who is charged with providing leadership and control to more than one local authority, accounting separately to each local authority. Formally no employee can have more than one employer. The person occupying a 'shared' post will be an employee of just one local authority even if the job description requires that they act in the service of other local authorities and are held to account by more than one local authority.

Sometimes shared appointments are supported through Service Level Agreements (SLAs) where one organisation retains the employee, with obligations for service delivery to another organisation in return for a contribution towards that employee's salary. Details would need to be worked out e.g. in relation to VAT liabilities and additional payments to other staff taking on additional duties in support of the shared employee.

A Contractual Arrangement

It is possible for one local authority to enter into a contract to provide services to another. This can be a simple means whereby an economy of scale can be realised or a specialist resource shared. Any such contract would specify agreements on price and service standards and should performance not meet the terms of the contract then there would be a breach of contract.

However, the EU public procurement regime has the objective of ensuring that where goods and services are exchanged on a contractual basis then there should normally be open competition across the EU. Therefore, depending on the nature and volume of the exchange between local authorities there is potentially the need to subject the exchange to competition across the EU.

Delegation of Functions – Lead Authorities and Joint Committees

It is possible for one local authority to delegate a function to another local authority or to a joint committee of several local authorities. Through such a process of delegation a task that was once done by separate local authorities may be done on a shared basis for several local authorities. Such a delegation should not create a contract and on this basis EU procurement rules would not apply to such delegation arrangements.

A lead local authority to which functions may be delegated is a legal entity and can therefore enter into contracts, including employment contracts, in fulfilling the discharge of a delegated function. A joint committee is not a legal entity and whilst any delegation of functions to a joint committee will allow it to make decisions on behalf of its constituent local authorities it cannot enter into employment or other contracts in seeking to implement such decisions.

Where the collaborative purpose is to agree a shared plan then delegation to a Joint Committee is in itself an appropriate arrangement. If staff are needed to support a joint committee and its preparation of plans they may be employed by a lead authority.

Where the collaborative purpose is to agree the terms of a shared procurement a Joint Committee would be an appropriate arrangement but there would need to be a lead authority to be the legal entity which enters into the contract.

Where the collaborative purpose is to share the delivery of a service then the delegation of the function to a lead authority could achieve this purpose. This could then be complemented by a Joint Committee to provide joint oversight of the lead authority. Alternatively the delegation of functions could be to the Joint Committee which then charges a lead authority enter into contracts and hold property on its behalf.

Whilst the delegation of functions is not a contract it is important that a document is agreed which sets out standards of service delivery, the apportionment of costs, rights in the event of failure to achieve set standards and rights of exit. If a joint committee is set up, its remit and powers need to be clearly set out and simultaneously agreed by all partners.

A Special Purpose Vehicle (SPV)

The delivery of shared services can be achieved through the creation of a new legal vehicle or entity for the specific purpose of delivery the shared service. There are a number of legal forms that a SPV may take: e.g. a company limited by guarantee, a community interest company, a trust. Often there are tax implications associated with the different models so a deeper analysis of risk and finance would need to be undertaken. Such SPVs allow the intended recipients of the shared service to take shared ownership of the organisation that they create for this purpose. The SPV would not be profit seeking and would make charges for its service sufficient only to cover costs. The SPV would be able to hold property and enter into contracts including employment contracts.

The participating local authorities would nominate the members of the SPV board who would be charged with ensuring that the company was viable and well governed. If councillors or officers are appointed as directors, conflicts of interest arise as directors owe duties to do their best for the company. Directors would also look to the company to provide them with suitable indemnities, which would be an additional set up requirement and cost. There would be service level agreements between the company and the participating local authorities which would specify service standards. There would be an agreed pricing mechanism and arrangements for exit.

The European Commission has proposed a directive which seeks to clarify the circumstances in which local authorities may contract for services from other local authorities, potentially through s SPV, without requiring a public procurement (see section 6.3 of Trowers and Hamlins Guidance). Those circumstances include:

- The agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks;
- The participating contracting authorities do not perform on the open market more than 10% in terms of turnover

- The agreement does not involve financial transfers between the participating contracting authorities other than those corresponding to the reimbursement of actual costs of the works, services or supplies
- There is no private participation in any of the contracting authorities involved.

Exemptions from EU procurement requirements is an area of complex case law, specialist legal advice would be needed on any proposed SPV.

A Joint Venture

The delivery of a shared service can be achieved through a company limited by shares in which share ownership is taken by both a private sector company and by the local authorities. This can give the venture access to private sector capital and expertise. Should the intention be to provide a shared service through a Joint Venture, then specialist legal advice would be needed to ensure compliance with the EU procurement rules. If the delivery of services involves trading, note that, as yet, police authorities do not have the power to trade. Local authorities must follow strict guidelines and can only trade through a company.

4. How do we manage the performance of a collaboration?

There is often a keen debate over the governance model for a collaboration. Too often that debate eclipses what should be our real concern – ensuring that we get the expected performance and services standards out of the collaboration.

Membership of a Joint Committee or a Company Board provides an opportunity to assure the good management of the shared service. It is not usually the forum for assuring that citizens and local authorities get the service that should expect from the collaboration.

The provision of a shared service may be through:

- A contract with another local authority;
- A contract with a Special Purpose Vehicle;
- The delegation of function to another local authority or to a joint committee.

In each case there needs to be a document which sets out:

- Service standards;
- Arrangements for pricing or cost apportionment;
- Arrangements for redress in a situation of performance failure;
- Arrangements which provide for both resilience for a given period of time and also for possible exit after such a period.

There are particular complexities relating to the performance management of a delegated function. On the face of it responsibility has been delegated to another local authority or to a joint committee and the capacity of the participating local authority to sustain an interest in the performance of that service has been constrained. This may be overcome by care in defining the terms of the delegation (see section 10.4 of Trowers and Hamlins).

5. How do we scrutinise collaborative activity?

Scrutiny should not be a 'bolt on' to any collaborative activity; indeed, the case for collaboration may have been initiated or at least explored by a scrutiny committee in the first place.

Scrutiny not only plays a key role in terms of governance and performance management arrangements, but also plays a key role in terms of local accountability and local democracy; whilst services may be commissioned or delivered on a collaborative footing, accountability remains local.

There are a range of approaches to scrutiny of collaborative activities, and may include scrutiny by existing scrutiny committees on a council by council basis, joint meetings between councils' scrutiny committees through to the establishment of new joint overview and scrutiny committees (following the Local Government (Wales) Measure 2011).

Depending on the collaborative activity in question, scrutiny could be ongoing and intensive (e.g. regular reporting/review), annual or bi-annual reporting or based on an ad-hoc/time limited arrangements (i.e. no standing scrutiny arrangements but potential to form time-limited scrutiny committees/task & finish groups to carry out investigations/reviews as necessary).

As noted above, scrutiny may have initiated a case for collaborative activity or may be involved from project inception, scrutinising the robustness of proposals, business plans, project plans or risk assessments prior to their approval. Scrutiny may also be involved in monitoring the performance and governance of a collaborative project/service on an ongoing basis; scrutinising the impact of individual projects and disseminating learning to inform future collaborative initiatives; or monitoring the impact on individual local authority areas of collaborative initiatives – e.g. how well does a collaborative project deliver improved services or value for money for the people of a local authority area?

As collaborative business models vary on a case-by-case basis, so too will the appropriate governance and scrutiny arrangements; authorities will need to consider their approaches to scrutiny, including the form and frequency of scrutiny activity, on a case-by-case basis

The Local Government (Wales) Measure 2011 gives powers to councils to form joint overview and scrutiny committees. However, [at the time of writing] the Welsh Government has not issued statutory Guidance or Regulations on joint overview and scrutiny committees, which is expected in the Autumn of 2012. It is anticipated however that joint overview and scrutiny committees will have the full range of powers and duties that are available to individual council committees, including powers to establish sub-committees, powers to call-in and duty to scrutinise designated persons.

6. How do we engage staff in collaborative activity?

Any successful programme of collaboration requires the active involvement of employees and their trades unions.

Informal networks would not normally create employment issues of any significance. Arrangements for shared planning or shared procurement normally require little more than that a few employees are tasked with supporting the collaboration whilst their existing employment contract with their local authority remains unchanged. However other collaborative arrangements increasingly involve significant employment implications on which specialist advice is needed

A collaborative arrangement which leads to substantial shared service delivery will create more complex employment issues in which choices need to be made. In such cases functions which were once performed in separate local authorities will be performed either by a lead authority or by a specially constituted new legal entity. There are likely to be two possible routes for the future of employment of existing staff once such a transfer has occurred.

Secondment

Staff engaged in the new shared service activity could retain their employment contract with their existing local authority and be seconded to the lead authority or new legal entity. Their terms of employment would be unchanged. New employees could either be employed by the new employer or could be recruited by participating local authorities and seconded. The process of secondment is by agreement with the individual employee.

Transfer

Staff who were engaged in the function when it was performed by separate organisations have a right to transfer to the new organisation which is providing that function on a shared service basis. The details of the function will need to be looked at very carefully to determine which staff members are affected. This transfer may be subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and again specialist advice would be needed as the situation can be complicated, Under the TUPE regulations

staff retain all their existing statutory employment rights and contractual entitlements. There should be no redundancy or change in terms and conditions as a result of the transfer. Any future redundancies or contractual changes in terms and conditions would have to be for economic, technical or organisational reasons associated with the new employer. However this is a rigorous test and generally not easily relied on, hence the need to take early advice on any proposals to harmonise terms and conditions.

Local Government Modification Order (RMO) Issues

Consideration will need to be given to the impact on staff with regard to transfer or recruitment to new special purpose vehicles or joint ventures. This is because such bodies may not be automatically included within the Local Government Modification Order (RMO), and the effect of the RMO is to make local authorities associated employers for redundancy purposes. It may be possible for such a shared service body to obtain admittance to the RMO, but an application cannot be made until after it has been set up. The impact of this for staff transferring is that they cease to be covered by the RMO at the point of transfer and will lose their continuity of service for redundancy pay purposes if they subsequently return to local government at a future date (if the return to local government within 5 years of the transfer they retain service continuity for annual, maternity and sick leave purposes). Even though the impact of this may not be felt until some time after the transfer (and may not be felt at all if the shared service vehicle subsequently gains admittance to the RMO) it will be important to ensure that the appropriate representatives are informed of the implications as part of the Information and Consultation requirements under the TUPE Regulations.

Where a special purpose vehicle or joint venture is utilised, the continuity of service of new recruits from the local government family will also be in doubt, for a period at least (where the new body is not covered by the RMO). The position could therefore be uncertain at the time of recruiting, which may deter local government applicants with long service from applying for vacancies. This problem can be overcome by the new employer contractually recognising previous service for leave, sickness and most importantly redundancy purposes, either permanently, or until the shared service body is admitted to the RMO.

7. Who pays for collaborative activity?

In any collaboration which relies on shared resources there will need to be an agreed mechanism which allows for the shared funding of those resources. This may be done by apportioning the costs of the shared resource on a formula basis. The formula selected will vary according to the purpose of the collaboration. Some will use a population based formula; others may use a client based formula: number of employees, number of children in school, number of children in care. Some service delivery collaborations may have a unit costing system which charges the local authority according to the demands that it makes on the service. There can be mixed funding systems so that a defined core service is provided through a formula based cost apportionment but 'extra' service can be acquired on a unit cost basis. The financial arrangements should be clearly set out, particularly in relation to the relevant audit and accounting regulations.

8. How do we make it happen?

Most of this toolkit focuses on a number of important technical aspects of collaboration. However, resolving these issues will never be sufficient. Making the collaborations happen are about people working together and there are a complex range of relationship issues that need always to be worked through. These may include:

- The people who are responsible for the shared activity need to know that they are responsible for shaping the collaboration;
- People need to be motivated by their understanding of the purpose of the collaboration. People want to provide the best service possible with the limited resources available and they will engage in collaborations if it can be seen as a means to this end;
- Leaders need to lead in setting out expectations and strategy but they need to give people the space, the empowerment to make relationships across organisations and make change happen;
- When an agreement to work together is made, senior managers need to identify the people responsible and allow them to commit to projects, ensuring that project groups do not suffer from a rotating or diminishing membership;
- Collaborative projects need effective and responsible project management. All the normal tools of good project management apply: records of decisions, clarity of action planning, the identification and management of risks;
- Collaborative projects can be undermined by 'game playing': people who do not question the collaborative purpose but who find the means to delay, distract and mobilise fears. There needs to be leadership in ensuring that there is always an open declaration of contrasting objectives and perceptions and then a commitment to any shared purpose;
- Communication is key - wherever people feel excluded from a collaborative exercise, they will oppose it;
- Performance is the other key – set the standards, watch, measure, report and question.