Forming partnerships

Motivators

Based on our analysis, it is clear that Mutuals are aware of and feel the effects of the growing pressure to partner from commissioners. Some respondents have explicitly identified it as a primary reason to form partnerships:

> *"I don't think we are in a position where we could think of partnerships to purely grow. Nevertheless, nearly all the bids that we are involved in now involve partnerships. Most of our partnerships are a result of this pressure from commissioners."*

However, another important finding from our research is that macro-commissioning[1] is not the sole motivator for Mutuals to form partnerships. In fact, the majority of Mutuals preferred to think about partnerships in the context of long-term strategic implications, rather than for the purpose of a single contract. Other motivators to partner listed by Mutuals included:

1. Sharing infrastructure (e.g. back office functions)
2. Building capacity (e.g. more staff to cover in case of maternity leave or sickness)
3. Partnering with Local Authority to secure work in other ways than through procurement
4. Diversification of incomes streams beyond public sector commissioned contracts to protect financial sustainability

[1] Macro-commissioning - the process of meeting needs at a strategic level for whole groups of service users and/or whole populations

Barriers

When asked to select three key barriers to forming partnerships, the one identified the most related to the complexity of legal arrangements (selected by 59% of respondents). This was followed by challenges around working with partners who have incompatible cultures or values, and the extra time it takes to work on a partnership. It is important to raise a question of the extent to which these barriers are real versus perceived.

Key risks

When considering or forming a partnership, Mutuals highlighted financial and reputational risks, as well as a risk of costs outweighing benefits.

- **Financial risk**
  Financial implications were one of the most frequently mentioned concerns related to forming partnerships. In particular, how are project risks distributed and who will be responsible for what share of financial consequences? Is the risk/reward balance right for each partner?

- **Reputational risk**
  Entering a partnership with other organisations carries a risk of potential reputational damage in case of partners' delivery failure. It is therefore important to consider how resilient partners are (both in isolation and as a partnership) to unexpected shocks to the supply chain.

  The impact on organisational identity has also been a key consideration. For instance, when forming partnerships with private organisations, Mutuals were concerned that their social value might be compromised or perceived as compromised.

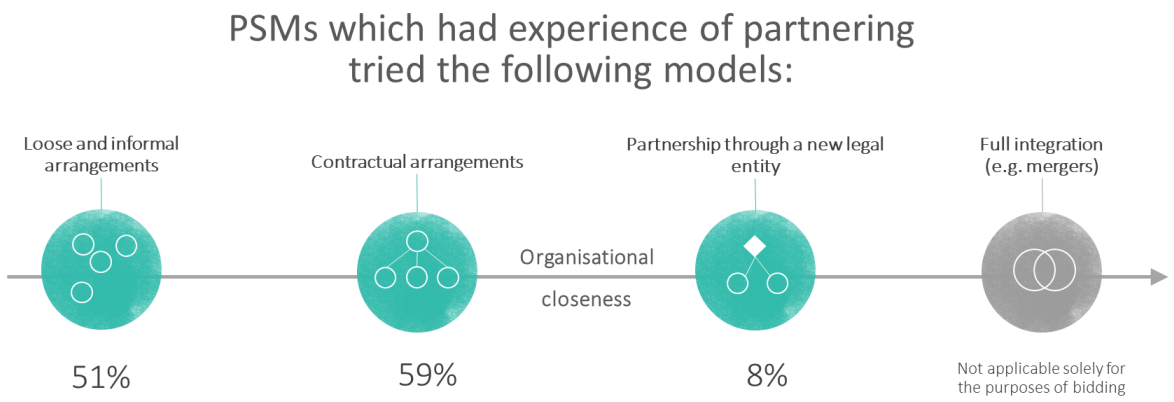
> *"We had a negative experience with partnering – it was very hard work, partnership was complex and expensive, and our commissioners don't understand partnerships."*
>
> – Community health PSM

- **The costs outweighing the benefits**
  Partnerships require commitment of time, energy and resources. Thus, there exists an overarching concern that the costs put into establishing a partnership will outweigh the benefits. This was a particular concern for those that have not established strong relationships with their partners yet and thus anticipate unknown risks associated with the chosen partner.

Range of options available

There are a number of legal forms that partnerships can take and the choice of an appropriate one will depend on a number of factors ranging from commissioner preferences to the relative size and specialism of the partners. Rees, Mullins, & Bovaird (2012) suggest thinking about the range of options available as a spectrum of organisational closeness.

Figure 6: *Proportion of respondents with experience of partnering by different legal forms*



On one side of the spectrum organisations can form informal consortia where relationships between members are loose, shaped by a memorandum of understanding rather than a contract. This is a relatively quick way of forming a partnership that allows partners to maintain full autonomy and work jointly on some activities. Informal arrangements were a fairly common approach – 51% (20 respondents).

Next on the spectrum are contractual arrangements – the most common arrangements chosen by Mutuals (usually in a form of a subcontractor arrangement). It should be highlighted that this category can range from a simple subcontractor arrangement to complex multi-provider models or alliances.

Another way of framing the partnership is through establishing a new legal entity. We found that only 8% of Mutuals (3 respondents) had experience of bidding for a contract through a new legal entity. This approach requires significantly more preparation and legal support than the previous two. However, it also brings benefits that extend beyond delivering a single contract, discussed later in the report.

On the far right of the spectrum partners achieve full integration through merging. This approach will not be discussed here in detail as it is not applicable to forming partnerships for the purposes of securing contracts.

The next section of this chapter lists examples of partnership models and their relative merits. We start with a description of example models of informal arrangements, contractual arrangements, and new legal entities. We then outline key considerations for choosing a model. The reader should note that the list is not exhaustive and should only be used as guidance.

Loose and informal arrangements

Model	Advantages	Disadvantages
Informal arrangement Providers enter into individual contracts with the commissioner and agree to collaborate. This might involve exchanging information, cross-referrals, joint training, and/or sharing resources to increase purchasing power. Informal arrangements may or may not involve establishing a steering or networking group which will provide a strategic direction for the partnership. Informal partnerships are often regulated by an agreement like a memorandum of understanding (MOU) which is not legally binding but defines how organisations will work together.	▪ Quick to establish, as no formal procedures are involved ▪ Minimum cost to establishing a partnership ▪ Flexibility – can be easily adapted to any change in circumstances ▪ Members retain full autonomy	▪ Can be problematic if things go wrong as there is no formal way of achieving a consensus. ▪ Not clear where liability sits. ▪ Although this arrangement may be sufficient for informal collaboration, a more formal arrangement is needed for the delivery of a contract.

Contractual arrangements

Example model	Advantages	Disadvantages
Sub-contractor / Associate arrangement The prime contractor enters into the main contract. Each sub-contractor/associate enters into a sub-contract with the prime contractor. This model could include social franchising where appropriate.	▪ Simplicity ▪ Familiarity – most parties will have used sub-contractor relationships previously ▪ Flexibility – If need to change sub-contractors in the future ▪ Does not involve the creation of any new entities and the formalities around this	▪ Prime is liable for all sub-contractors (although contracts and insurance can mitigate this). ▪ Sub-contractors can have less control.
Contractual Joint Venture (JV) The two (or more) parties agree to co-operate on the basis of an agreed contract. This will usually record the resources that each party will contribute to the venture, how reward will be shared, contracting protocols with third parties and communication and project management protocols.	▪ Flexibility – can involve whatever provisions the parties wish. ▪ Does not involve the creation of any new entities and the formalities around this. ▪ Particularly useful where there is no head contact so no need for a lead partner.	▪ Can be unclear who will contract with the commissioner – who may prefer a single contractor. ▪ Can be hard to strike the balance of covering all the relevant issues while avoiding unnecessary complexity.
Alliance A form of Contractual Joint Venture usually used in the Health sector. A group of providers who agreed to adhere to common principles and ways of working each separately enter into a single arrangement with a commissioner to deliver services. The commissioner(s) and all providers within the alliance share risk and responsibility outcomes and this is provided for in the contracts. All organisations are equal partners and rely on the alliance governance arrangements rather than sub-contractual arrangements.	▪ Each member of the Alliance will have their own contractual relationship with the commissioner to members of the alliance are not responsible for each other. ▪ A clear set of principles and way of working.	▪ If the commissioner asks for joint and several liability, the risk for each supplier may increase because the commissioner is asking for each part to be responsible for the others. This undermines the essential advantage of the alliance.

Case Study: Subcontracting arrangement

Lessons learnt from an unsuccessful bid

About DYS Space Ltd

DYS Space Ltd ("Space") delivers youth services across Devon. It spun out of Devon County Council in February 2017 to become a Company Limited by Guarantee and a registered charity. Space recently partnered with two other organisations to bid for a new contract. Ultimately the bid was unsuccessful, with the consortium losing out to the incumbent provider. Nevertheless, Space reports many benefits resulting from the partnering process.

Setting up the partnership

Space was approached by two organisations interested in collaborating to bid for new work. Advisors facilitated initial workshops to set aspirations across all partners and identify some red lines.

> *"It was facilitated in a way that it was safe to challenge, safe to ask questions, safe to test assumptions and very quickly we moved to a formal partnership agreement."*

The group decided that a lead provider model with subcontracting arrangements was the most appropriate in this case. Space was one of the subcontractors. To prepare for the procurement process, the team used skills from across the group. One partner had deep analytical ability and contributed by modelling costs, while Space offered its bid writing expertise to capture the service model.

Challenges

As the partners did not know each other well, they deliberately focused on working on trust by being brutally honest with each other and putting all vulnerabilities on the table in the first instance. One of the biggest challenges for the partnership was language – getting everyone's terminology right. To overcome this challenge, they strived to create an environment where no question is 'stupid' or 'too basic'. Clear communication and clear ways of resolving issues facilitated the process.

Lessons learnt

Although Space and its partners lost the bid, the relationships formed, and lessons learnt were considered invaluable. Strategically, the exercise benefitted Space as it showed commissioners that they are an organisation that wants to collaborate with others. The experience has also benefitted their service users. Space's partners are now co-located in some of their centres which makes young people much more likely to access appropriate services in a timely manner.

> *"The fact that we haven't won that bid doesn't mean that we're parking the relationship. The process is still ongoing. We're looking at what learning we can get out of it and how to be more effective in the future."*

Since the tender, Space and one of the other original partners have been co-commissioned to run a pilot to look at new ways of managing young people in care's personalised budgets.

> *"We were able to jointly respond quickly as we'd already worked through the mechanics of partnership agreements and trust had already been established."*

Partnership working via a new legal entity

Example model	Advantages	Disadvantages
Company Limited by Shares A company limited by shares is a form of a JV where partners own and control a new company. Liability for shareholders is limited to their share capital. The new company can enter into contracts in its own right. Company is liable to pay corporation tax on surpluses /profits prior to distribution to shareholders	▪ Limited liability (unless shareholders provide parent company guarantees). ▪ Clear who is contracting with the commissioner. ▪ Can suit JVs where some or all of the surplus / profit is to be retained in the JV (depending on the nature of the JV and the JV owners).	▪ Administration for new entity (accounts, tax returns, insurance etc.). ▪ Winding up the JV likely to involve more steps.
Community Interest Company Limited company (which can be a company limited by shares or guarantee) with a "Community Interest" and an asset lock that limits the use of the company's assets to the Community Interest and caps dividends at 35% of distributable profits. Likely only to be used where the commissioner requires / favours a CIC and / or there is a desire to establish a stand-alone entity that can continue benefiting the Community Interest beyond the immediate contract / services.	▪ Limited liability (unless members/shareholders provide parent company guarantees). ▪ Clear who is contracting with the commissioner.	▪ Administration for new entity (accounts, tax returns, insurance etc.). ▪ Winding up the JV likely to involve more steps (surplus assets can only be distributed for the benefit of the Community Interest or to another asset locked body with similar objectives). ▪ Distribution of profits / surpluses to owners by way of dividend is limited to 35% of distributable profits (although fees can be paid to JV partners for services delivered to the CIC)
Limited Liability Partnership A partnership with limited liability. Liability for most members is limited to their equity / capital accounts. The LLP can enter into contracts in its own right. All surpluses / profits are taxed as if they were income received by the owners, whether or not they are paid to the owners. Particularly useful for charities.	▪ Limited liability (unless partners provide parent company guarantees). ▪ Clear who is contracting with the commissioner. ▪ Can suit JVs where all of the surplus / profit is to be distributed immediately to the owners.	▪ Administration for new entity (accounts, insurance etc.). ▪ If parent company guarantee is in place, may be of limited benefit to JV partners. ▪ Winding up the JV likely to involve more steps.

Case Study: Limited Liability Partnership

Dormant partnership with huge potential

About the Health and Wellbeing Partnership LLP

Established in 2015, the Health and Wellbeing Partnership LLP (HWP) is formed of eight social enterprises with a collective turnover of circa £33m. The partners have complementary expertise in health, social care, education, and housing services and are looking to both compete for large service pathway contracts and attract investment.

The beginnings

> *"At the beginning all chief executives of all spin-outs used to meet up in London as a support network. Lots and lots of friendships and relationships were built as a part of that journey. Those friendship started to spark ideas. All of it emerged from there."*

As individual organisations they didn't have sufficient capacity and financial clout to bid for large health and social care contracts. They agreed to join together in a LLP – a model which protects the autonomy of the members whilst allowing them to benefit from the collective organisation ballast.

HWP was formed with assistance of business consultancy Mutual Ventures.

Success so far

> *"One of the major benefits is recognising where your skills are and aren't and exploiting each other's strengths. We got a lot of likeminded organisations together with such a variety of skills and abilities to bring to the table."*

HWP has successfully secured a place on a limited framework of suppliers for health and wellbeing commissioning in the Greater Manchester area. Positive relationships have been built with several selected social investors who are keen to support the LLP as a model.

Concerns

Despite the enthusiasm and an overwhelming support from the sector, HWP have not yet had a chance to bid for and deliver a contract jointly, due to lack of appropriate opportunity to bid for.

> *"Everyone we spoke to said "The HWP is brilliant. It's potentially the future of mutuals being able to get together; third sector having the capacity to bid for huge contracts that only big private providers would be able to go for"*
> *(…)*
> *The HWP is still in existence but it is dormant at the moment due to lack of work to bid for. It's about finding the right thing at the right time to do. This is blocking us at the moment."*

Key considerations for choosing a legal arrangement for the partnerships:

- Will the commissioner accept this arrangement?
- What should be formalised/made contractual and what should be left informal?
- What assets/services are to be contributed to the partnership by the partners?
- How should risk and reward be shared between the parties?
- What will the commercial arrangements between the parties look like?
- How will you refer to the collaboration in publicity material? (e.g. name of collaboration, use and order of logos)
- How to resolve disagreements?
- How can the termination of the contract happen and what are the implications?

Key steps in forming and operating in a successful partnership

Regardless of the legal form, there are a number key steps that need to be taken to maximise the chances of a successful partnership. The following list is adapted from an evidence review on effective partnership processes in UK public services by Cook (2015).

Resources for partnership

- Ensure sufficient staff, adequate funding, and effective IT systems are in place for the partnership.

Partnership activities

- Establish what each organisation brings and wants to gain from working in a partnership.
- Ensure that every member is fully on board and that your values and aims align.
- Clarify roles, responsibilities and lines of accountability.
- Think about information sharing and confidentiality – you may want to sign a non-disclosure agreement with your partners.

Partnership engagement and stakeholder awareness

- Ensure that key staff working at operational and strategic levels are included.
- Ensure that the need for the partnership is understood by the key stakeholders.

Knowledge, attitudes, skills and aspirations

- Ensure that enough time is allocated to developing a trusting, collaborative relationship between partners.
- Ensure that all partners understand and respect each other's ways of working and procedures.
- Ensure that partners feel that relationships are mutually beneficial.

Practices and behaviours

- Think about establishing a steering group with representatives from each organisation.
- Agree on policies and procedures that every member will need to adhere to.
- Ensure regular and effective communication and information sharing between partners at strategic as well as operational levels.
- Establish appropriate ways of conflict resolution.

When asked to select top three success factors, 'softer' features related to trust and vision were selected by the majority of respondents. Sound policies, procedures, and management systems were regarded as critical by fewer respondents.

1.
Trust and valuing partners

2.
Shared vision

3.
Clear communication