7 WORKING WITH OTHERS

This chapter considers the working partnerships that public sector organisations may establish in order to deliver their objectives more effectively than they could acting alone. There are some common features to competent management of these relationships, and some specifics which apply to certain sorts of relationships. It is essential that the public interest and value for public resources are given a high priority in the management of all these relationships.

7.1 The case for working partnerships

7.1.1 Parliament and the public expect high quality public services, adapted flexibly to suit the needs of different kinds of customers. It can make sense for public sector organisations to work with partners to deliver these services. The partners may be other public sector organisations, commercial organisations, or bodies from the third sector such as charities and voluntary groups. In this way the public sector can harness skills appropriate to the purpose in hand.

7.1.2 There are many different kinds of partnership. Each involves some tension between autonomy and accountability with scope for conflict if the terms of engagement are not resolved openly at the outset. Box 7.1 outlines some key areas that need to be decided early in the relationship. Each partnership requires its own customised terms to work effectively. One size does not fit all.

box 7.1: issues for every partnership with a public sector member

- As for projects, the decision to engage with a partner should rest on a business case in the public interest, evaluated against a range of alternative courses, including doing nothing.
- Conflicts of interest, including reputation risks, should be consciously recognised and dealt with, eg through explicit safeguards in the terms of the partnership.
- The cultural fit of the partners should be good enough to give each party confidence about trusting the other(s).
- The partnership framework should be documented and the terms of engagement kept up to date so that there is no doubt about responsibilities.
- Partnerships should not be a way of weakening accountability for the use of public resources, including reporting to Parliament.

7.2 Setting up new arm's length bodies

7.2.1 When a department sets up a new arm's length body (ALB), it needs to decide which kind of body it should be. Each has its strengths and merits. In general it makes sense to let the functions of the new body determine its form. It is important to consult the Cabinet Office and the Treasury in this process. Annex 7.1 suggests sources of guidance on some common types of ALB, while annex 7.2 outlines how to determine whether a new ALB should be an agency, an NDPB or a non-ministerial department.

7.2.2 Designing a new body for partnership with a public sector organisation always requires careful planning. It is important to ensure that the new arrangement will deliver the intended outcome(s) without unnecessary and confusing complexity. The sponsor department is responsible in the first instance for ensuring that the budgetary control and internal disciplines of new ALBs are satisfactory. It is desirable to arrange for a clear line of sight between those making the key decisions and the machinery for implementing them.

7.2.3 While the established models of public sector bodies are often useful, it can sometimes make sense to design new kinds of ALB. When departments plan to innovate in this way, it is usually necessary to consider whether primary legislation is required and to secure appropriate Estimate cover. Treasury support for any innovative development of this kind is always essential.

7.3 What to clarify

7.3.1 When documenting an agreement with a partner, public sector organisations should analyse the relationship and consider how it might evolve. The terms of the agreement must be clearly understood by each party to avoid confusion as the partnership develops. Box 7.2 lists terms which should always be considered for inclusion in partnership agreements. The list is not exhaustive.

7.3.2 In framing founding documentation of this kind, the partners should adopt a proportionate approach in line with the scale and risk of the business involved. Parliament expects that public funds will be used in a way that gives reasonable assurance that public resources will be used to deliver the intended objectives. It is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises.

7.3.3 In this process the aim should be to put the Accounting Officer(s) of the parties in a position to take a well-informed view on the status of the relationship, enabling timely adjustments to be made as necessary. So there might initially be a significant degree of reporting and other exchanges, with potential for intervention, underpinning a venture which is large, experimental and/or risky; and scaling back later if experience gives confidence about performance. Conversely, a partnership following a well-tested pattern in a familiar area might call for less intervention.

7.3.4 Where a new partnership is being developed, it may be necessary or desirable to devise bespoke working arrangements sensitive to the position of each of the partners. Box 7.1 may not cover every angle. For instance, a partnership with a charity will need to be compatible with the charity's purposes and constitution, while safeguarding the public investment.

7.4 Agencies

7.4.1 Each agency is either part of a central government department or a department in its own right. Agencies are intended to bring professionalism and customer focus to the management and delivery of central government services, operating with a degree of independence from the centre of their home departments. Some are also trading funds.

7.4.2 Each agency is established with a framework document on the lines sketched out in box 7.2. With the exception of those agencies which are trading funds (see section 7.5), they are normally funded through public expenditure supplied by Estimates. Departments should consult the Treasury and Cabinet Office about the preparation of framework documents.

7.4.3 Depending on the scale and nature of an agency's responsibilities, it may be appropriate for a senior official of an agency to be a member of the sponsor department's departmental board. It may also be appropriate for a representative of the sponsor department to join the agency's board, as part of the sponsor department's responsibilities for strategy, performance, risk taking and delivery within the department.

box 7.2: framework terms for partnership agreements

purpose

- The aims of the relationship, its working remit, standards, and the key objectives and targets.

governance and accountability

- The statutory position, including any financial or other limits and any regulatory requirements.
- The governance of the partnership: the terms of engagement of the partners and any arrangements for appointment (or approval) of the senior people in the other partner.
- The extent to which any department is responsible to Parliament for the conduct of a partner (this is always appropriate for partnerships with departments' ALBs).
- Any other important features of the sponsorship role of the public sector partner, eg acting as intelligent shareholder or consulting third parties.
- Any arrangements for successor activity, eg establishing similar partnerships elsewhere.

decision making

- How strategic decisions about the future of the partnership will be made, with timetable, terms for intervention, break points, dispute resolution procedures, termination process, and so on.
- How the chain of responsibility should work, eg stewardship reporting, keeping track of efficiency, risk assessment, project appraisal, management of interdependencies, and so on.
- How the partnership will identify, manage and track opportunities and risks.
- The status of the staff; and how they are to be hired, managed and remunerated.
- How any professional input (eg medical, scientific) is to be managed and quality assured.
- Arrangements for taking stock of performance and learning lessons from it.

financial management

- The financial relationship of the partners, eg:
  - any founding capital (including assets, goods, financial sums or other valuables)
  - any grants, one off or periodic, and their terms
  - how any charges to customers or users are to be set
  - how the partnership's corporate plan and annual target(s) are to be agreed
  - how asset management and capital projects are to be decided and managed
  - how cashflow is to be managed, and current expenditure financed
  - the distribution of income and profit flows
  - any financial target, eg return on capital employed (ROCE)
  - terms for disposal of assets acquired with public funds
  - any agreed limits on the partnership's business.
- Monitoring, reporting, regular liaison and any other tracking arrangements.
- Internal and external audit arrangements, with any relevant accounts directions.

7.5 Trading funds

7.5.1 A trading fund is either part of a department or a department in its own right. Its business must finance most or all of its operations.

7.5.2 Each trading fund is set up through an order under the Government Trading Act 1990, subject to affirmative resolution procedure. Before such an order can be laid in Parliament, the

Treasury will need to be satisfied that a proposed trading fund can satisfy the statutory requirement that it is likely to deliver better efficiency and effectiveness. A period of shadow operation as a pilot trading fund may help inform this assessment.

7.5.3 Each trading fund must primarily be financed out of its trading income like any other enterprise. In particular, each trading fund is expected to generate a financial return commensurate with the risk of the business in which it is engaged. In practice this means the target rate of return should be no lower than its cost of capital. The actual return achieved may vary a little from one year to the next, reflecting the vagaries of the market in which the trading fund operates.

7.5.4 The possible sources of capital for trading funds are shown in box 7.3. They are designed to give trading funds freedom from the discipline of annual Estimate funding. The actual mix for a given trading fund must be agreed with the sponsor department (if there is one) and with the Treasury.

box 7.3: sources of finance for trading funds

- public dividend capital (equivalent to equity, bearing dividends - see annex 7.2)
- reserves built up from trading surpluses
- long or short term borrowing (either voted from a sponsor department or direct from the National Loans Fund if the trading fund is a department in its own right)
- temporary subsidy from a sponsor department, voted in Estimates
- finance leases

7.5.5 Further detail about trading funds is in annex 7.3. Guidance on setting charges for the goods and services trading funds sell is in chapter 6.

7.5.6 Some trading funds move on to become wholly owned companies within the public sector. When this process is in prospect, the appropriate disciplines (see section 7.8) should be adopted.

7.6 Departments working together

7.6.1 To promote better delivery and enhance efficiency, departments often find it useful to work with other government departments (or NDPBs - see section 7.7). This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups - arrangements loosely categorised as joined up government. Another model might entail sharing common services, perhaps in a common building. Such arrangements offer opportunities for departments to reduce costs overall while each department plays to its strengths.

7.6.2 Such relationships can be constituted in a number of different ways. Some models are sketched in box 7.4. The list is not exhaustive.

7.6.3 Shared services often need funding to set up infrastructure, eg specialist IT for procurement. This could be agreed in a spending review, or customers could buy in by transferring budget provision to the lead provider. Each of the Accounting Officers involved will need assurance that the project offers value for money for the public sector as a whole. The provider's charges should be at cost, following the standard fees and charges rules within central government (see chapter 6).

7.6.4 If the PAC decides to investigate joined up activity, the Accounting Officers of each of the participants should expect to be summoned as witnesses.

box 7.4: example models of joined up activities in central government

- one partner can act as lead provider selling services (such as IT, HR, finance functions) to other(s) as customers, operating under service level agreement(s)
- cost sharing arrangements for common services (eg in a single building), allocated in line with an indicator such as numbers of staff employed or areas of office space occupied
- joint procurement using a collaborative protocol
- a joint venture project with its own governance, eg an agency or company, selling services to a number of organisations, some or all of which may be public sector
- an outsourced service, delivering to several public sector customers

7.7 Non-departmental public bodies

7.7.1 Non-departmental public bodies (NDPBs) may take a number of legal forms, including various corporate models and/or charities. Most executive NDPBs have a bespoke framework in legislation or its equivalent (eg a Royal Charter). This framework may specify in some detail what the NDPB is to do, what powers are invested in it, and how it should be financed. Annex 7.1 has links to further information about NDPBs.

7.7.2 Each NDPB is a special purpose body which plays a part in the process of government. Each has a sponsor department charged with general oversight and responsibility for reporting its activity to the Treasury. So sponsor departments should have appropriate arrangements for regular monitoring with scope for steering the NDPB's performance as necessary. Sometimes other departments also take an interest in particular aspects of an NDPB's business.

7.7.3 NDPBs' sources of finance vary according to their constitution and function. Box 7.5 shows the main options available.

box 7.5: sources of finance for NDPBs

- specific conditional grant(s) from the sponsor department (and/or other departments)
- general (less conditional) grant-in-aid from the sponsor department
- income from charges for goods or services the NDPB may sell
- public dividend capital

7.7.4 In practice NDPBs operate with some independence and are not under day-to-day ministerial control. Nevertheless, ministers are ultimately accountable to Parliament for NDPBs' efficiency and effectiveness. This is because ministers: are responsible for NDPBs' founding legislation; have influence over NDPBs' strategic direction; (usually) appoint their boards; and have the ultimate sanction of winding up unsatisfactory NDPBs.

7.7.5 As with agencies (see 7.4.3) there may be value in some cross membership of an NDPB board with its sponsor department's board. This can foster mutual confidence and provide valuable insight for both parties. In any case sponsor departments need arrangements to monitor and understand their NDPBs' strategy, performance and delivery, usually built around a framework document which includes terms on the lines of box 7.2 (see annex 7.4 for a suggested outline and a specimen example). In practice these arrangements can be very similar to those departments need for their relationships with agencies (see section 7.4).

7.8 Public corporations

7.8.1 Some departments own controlling shareholdings in public corporations or Companies Act companies, perhaps (but not necessarily) as a step toward disposal. Except where a public corporation's powers are defined in statute, such a company is subject to all the disciplines of corporate legislation; and may also be an NDPB. Shareholdings of this kind may be managed through the Shareholder Executive, which also provides advice on managing strategic relationships.

7.8.2 To manage relationships of this kind, departments need to adapt the framework in box 7.2 to suit the corporate context while delivering public sector disciplines. The financial performance expected of a public corporation should give the shareholding department a fair return on the public funds invested in the business. Box 7.6 offers a checklist. The same approach may be appropriate for a trading fund, especially if it is expected to become a Companies Act company in time.

box 7.6: outline terms for a relationship with a public corporation

- the shareholder's strategic vision for the business, including the rationale for public ownership and the public sector remit of the business
- the capital structure of the business and the agreed dividend regime, with suitable incentives for business performance
- the business objectives the enterprise is expected to meet, balancing policy, customer, shareholder and any regulatory interests
- the department's rights and duties as shareholder, including:
  - governance of the business
  - procedure for appointments
  - performance monitoring
  - any necessary approvals processes
  - the circumstances of, and rights upon, intervention

7.8.3 A shareholder department may also use a company it owns as a contractor or supplier of goods or services. It is a good discipline to separate decisions about the company's commercial performance from its contractual commitments, so avoiding confusion about objectives. So there should be clear arm's length contracts between the company and its customer departments defining the customer-supplier relationship(s).

7.9 Outsourcing

7.9.1 Public sector organisations often find it useful to outsource some non-core services or functions rather than provide them internally. Typical candidates include cleaning, catering and IT support. A much wider range of services is potentially suitable, depending on the nature of the organisation's business. The first step in setting up any outsourcing agreement should be to specify the service(s) to be provided and the length of contract to be sought.

7.9.2 It is good practice to arrange some form of competition for all outsourcing. In most cases, it is legally essential to open the competition to all firms in the EU (see annex 4.4). Where the organisation foresees the need to hire services at short notice, for example legal services to support opportunities, threats or other business pressures which emerge with little warning, it is good practice to arrange a competition to establish a standing panel of providers from which services can be called upon to deal with rapidly emerging needs.

7.9.3 In choosing partners to provide outsourced services, public sector organisations should seek the best value available. This may not be the same as the cheapest price.

7.10 PPPs and PFIs

7.10.1 Public private partnerships (PPPs) use structured arrangements between the public and private sectors to secure an outcome delivering good value for money for the public sector. These arrangements use private sector management skills, with suitable arrangements to protect staff terms and conditions. Various different business models are possible.

7.10.2 One special kind of PPP is the private finance initiative (PFI). In such deals a public sector organisation contracts with a private sector entity to construct a facility and provide associated services of a specified quality over a sustained period. Because the private sector contractor puts its own funds at risk, it has powerful incentives to deliver to time and cost, and can thus offer value for money. Such contracts should normally be built up using standard terms published by the Treasury (see annex 7.5).

7.10.3 PFI procurement is a flexible, versatile and often effective technique. But it is not appropriate for every project. Annex 7.5 discusses when PFI is worth considering and how it should best be used for good results.

7.11 Wider markets activity

7.11.1 Wider markets activity is part of good asset management in the public sector (see annex 4.8). Significant projects nearly always require some form of public-private partnership to operate and grow successfully, eg harnessing a private sector firm's marketing reach. In this way public sector organisations can make use of private sector expertise and finance to exploit the commercial potential of government assets. A great variety of business models is possible.

7.11.2 When public bodies have assets which are not fully used but are to be retained, it is good practice to consider exploiting the spare capacity to generate a commercial return in the public interest. Any kind of public sector asset can and should be considered. These can include both physical and intangible assets, for example land, buildings, equipment, software and intellectual property.

7.11.3 Such commercial services always go beyond the public sector supplier's core duties. Nevertheless the assets concerned have been acquired with public funds. So it is important that services are priced fairly: see chapter 6. It is also important to respect the rules on state aids: see annex 4.9. In planning any wider markets activity, central government organisations should work through the checklist at box 7.7 and the guidance in annex 7.6.

box 7.7: planning wider market activities

- define the service to be provided
- establish that any necessary vires and (if necessary) Estimate provision exist
- identify any prospective business partners and run a selection process
- if the proposed activity is novel, contentious, or likely to set a precedent elsewhere, or could exceed 5% of the department's DEL provision, obtain Treasury approval
- take account of the normal requirements for propriety, regularity and value for money

7.11.4 While it makes sense to make full use of assets acquired with public resources, such activity should not squeeze out, or risk damaging, a public sector organisation's main objectives and activities. Similarly, it is not acceptable to acquire assets just for the purpose of engaging in, or extending, wider markets activity. If a public sector supplier's wider markets activity reaches a point where further investment is needed to keep it viable, reappraisal is usually appropriate. This should consider alternatives such as selling the business, licensing it, bringing in private sector capital, or seeking other way(s) of exploiting the underused potential in the assets or business.

7.11.5 It is a matter of judgement when departments should inform Parliament of the existence, or growth, of significant wider markets ventures. It is good practice to consult the Treasury in good time on this point so that Parliament can be kept properly informed and not misled.

7.12 Working with third sector bodies

7.12.1 Central government organisations may also find it helpful to form working relationships with third sector bodies: that is, charities, social, voluntary or community institutions, mutual organisations and other not-for-profit bodies. Partnership with such bodies can achieve more than either the public or the third sector can achieve alone. For example, it can offer an extra dimension by providing insight into what particular groups and communities want, and what they can contribute, to the delivery of public services.

7.12.2 In this kind of relationship it is common for a public sector funder to make resources available to a third sector partner. These could be payments for services, assets, grants or other transfers for particular purposes. It is usual to include safeguards to ensure that any grants are used for the intended purpose (see annex 5.2). Otherwise Parliament might not be confident that its approval of voted resources is being honoured.

7.12.3 The safeguards to be applied should be agreed at the start of the relationship. They should be designed to suit the purpose and circumstances of the transaction. It is often right to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold (clawback). But it can be appropriate and valuable to set more flexible terms and conditions so long as they ensure that publicly funded assets are used for the intended purposes in broad terms. This is explored further in annex 7.7.

Annex 7.1 Sources of guidance on setting up ALBs

Annex 7.2 Guidelines for choosing the form of an ALB

Annex 7.3 Trading funds

Annex 7.4 Specimen framework document for executive NDPBs

Annex 7.5 Private finance initiative (PFI) projects

Annex 7.6 Wider markets activities

Annex 7.7 Working with the third sector