

Inquiry into Progress with local government collaboration

Response from : Trowers and Hamlins

Dear Sir/Madam

**Inquiry into the progress with local government collaboration**

Thank you for the opportunity to respond to the inquiry.

We are proud to have written the Legal Guidance on Collaboration for the Welsh Local Government Association in 2012, which thoroughly explains the legal issues relating to collaboration but also addresses in some depth, the practical issues which local authorities must take into account when seeking to satisfy their duties and deliver collaborative arrangements. Our focus in writing the guidance was to draw upon our experience of perceived misunderstandings in the sector, to explain and to debunk a few myths applying to collaboration and to help break down a few potential barriers to achieving successful collaborative arrangements.

The report set out a legal analysis of the specific powers and duties relating to collaboration which are set out in the Local Government Wales Measure 2009 (as amended by the Local Government Wales Measure 2011). It is important to understand the scope of this law and the enforcement provisions applying to it. As a piece of legislation, however, the collaborative provisions are quite blunt. They state the objectives of collaboration (to deliver the improvement duties) and what collaboration as such means, but do not differentiate between the different types of legal structures which might be utilised by local authorities in achieving their outcomes.

It is also important to understand that long before the particular provisions in the Local Government Wales Measure 2009 were introduced, local authorities had pre-existing *powers* of collaboration (albeit no specific *duty*). These pre-existing powers have applied to both Welsh and English authorities for some time and remain unchanged by the "new" specific Welsh powers and duties. What is notable is that these pre-existing powers are generally framed in a way which lends itself to a particular structure of collaboration rather than simply being written as general powers to collaborate as is the case in the Measure.

In our experience, there has been a long tradition of generalising arrangements for collaboration, which has probably not helped to achieve too many outcomes. Long before the term collaboration became fashionable, similar reluctance applied to shared services or joint arrangements. This tradition hasn't necessarily been helped by the bluntness of the provisions in the Measure, which do not really differentiate between the different legal and structural models.

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However, it is clearly the case that there are a number of different legal structures which can be utilised either under the general power or under the pre-existing powers and it is critical that local authorities in Wales are able to understand both the legal and practical implications of applying one or other of such structures. Indeed, our report, as well as setting out what the different legal structures are, elaborates at some length on the practical dimensions of delivering on each of those structures. As noted, we believe that it is critical to have an understanding of these dimensions in order to make collaboration work in the first place. Without such clear understanding, there is a tendency to adopt a rather loose understanding and subsequently loose arrangement applying to collaboration which lacks the necessary force to enable such arrangements to endure.

Later in this response, we have set out the different models which we have identified, but before doing so, it is also extremely important for local authorities to appreciate that collaboration may be bilateral or multilateral, depending upon the appropriateness of the particular services concerned, geography and politics. This is a theme which is strongly picked up in the Simpson Compact. The distinction is important because certain arrangements simply cannot work on a multiple arrangement. For example, it is virtually impossible for six authorities to come together in a contractual arrangement and to cross-contract with each other for services.

It should also be appreciated that collaboration can mean that councils might either set up new structures to deliver local authority services or might more simply set up new arrangements whereby one engages another to do something for it (whether under contract or some other local government mechanism such as delegation). Such a distinction is quite fundamental. If this distinction is lost in a perception that collaboration is one dimensional, then it seems hardly likely that councils could really put something together which has legal force and which will endure for some time.

In essence, the new **structures** that can be adopted are to either go down the route of some form of corporate structure (of which there are several variations, usually through a company but potentially others too) or through a joint committee, which is very much a creature of local government but enables authorities jointly politically to take responsibility for service.

The forms of new **arrangements** (without structure), which might be entered into are typically either contracts or delegation (under section 101 of the Local Government Act 1972) or possibly a secondment of one or more staff from one authority to another (again, utilising specific powers).

Our report identified that in addition to understanding both the different dimensions applying to collaborations as well as understanding the different types of legal structure that could be adopted, the fundamental issues in every structure which needed to be addressed (and which would be different depending upon the types of arrangement which were entered into) were finance, governance and human relations.

If one takes the finance issue as an example, there would be a whole host of difference between arrangements whereby a number of Councils form a joint venture company which then enters into contracts with each of them and the position where one authority enters into a contract with another for it to supply services to it and the arrangements whereby one authority delegates its function to another. Each will require very different financial arrangements to be put in place and each may bring in quite different consequences through tax and accounting treatment.

The governance of new arrangements is key. Local Government has very clear structured political oversight of the delivery of functions and services to its electorate. Collaboration and joint arrangements potentially erode that or at the very least move to a form of delivery whereby the political management is not quite so hands on. It is critical that good governance arrangements are put in place not only for new structures (where that is the chosen piece of collaboration) but also for individual arrangements. The temptation for local government, when contracting or otherwise dealing with another local authority is not to apply necessarily the same amount of discipline, scrutiny and oversight that it might otherwise do if it were to contract with the private sector. In our view, this can be a mistake in that the recipients of the service are exposed potentially to poor performance without the receiving authority either knowing quite what service it is receiving or having the procedures in place to performance manage and to have its contractor authority properly accountable to it.

In conclusion, we would subscribe to the view that collaboration has been at best patchy throughout Wales (a position no different in England). It is our firm view that part of the reason for this is that councils have not necessarily got to grips with the legal framework and appreciated the wealth of different structures which could be adopted in order to give effect to their collaborative objectives. It should also be pointed out that there is no one size fits all, in that different structures and options need to be properly analysed to fit with the particular collaboration in contemplation in order to work out which would fit best for the authorities concerned and the functions concerned.. We would also strongly reinforce the view that one of the reasons why collaboration, when it has been undertaken, doesn't always work is that councils have failed to put in place sufficiently strong binding arrangements between them such that there remains appropriate accountability for the delivery of services.

We hope that these observations are found helpful in the inquiry and would be happy to elaborate on any of the issues should you wish.

Yours faithfully

*Michael Brundage*