

Structures for Collaboration and Shared Services

Technical Notes

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PREFACE

INTRODUCTION

This publication has been produced by DCLG to assist those in local government in England, and for potential public sector, voluntary and business partners to understand the various structures that might be used with a public sector partner. They follow the same format as the publication Structures for Service Delivery Partnership – Technical Notes (ODPM 2002, updated by DCLG 2006). Most of the content will also be relevant to local government in Wales and Scotland but the notes have not been written to reflect the different legal and administrative arrangements that apply in those countries.

DCLG does not warrant that these notes reflect policy and they should not be used as a substitute for professional advice.

The law is always subject to change and interpretation. Whilst references to impending changes have been made, users need to be careful in ensuring that the notes reflect the current position.

ACKNOWLEDGEMENT

This publication has been produced by DCLG with the assistance of Alan Aisbett of Pinsent Masons, John Layton Associates and Enid Allen Associates.

CONTENT

The notes deal with the structures that local authorities might wish to contemplate using in collaborative and shared service delivery partnerships. The format of the document has been designed to cover legal, financial, employee and commercial issues. The length of the text devoted to any of the structures is not intended to imply a preference for one structure over another.

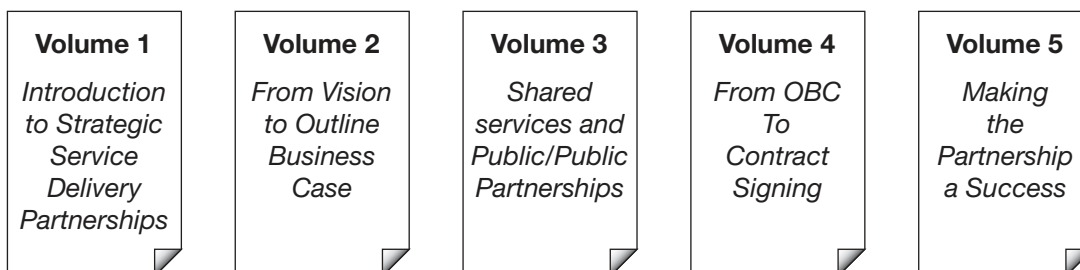
Although the notes explain the mechanics of various legal structures they are not intended to replace legal, accounting, financial, tax and other technical advice which may be needed to implement a structure that is specific to a particular project.

Throughout this publication the use of the general term “Department” denotes activities initiated, carried out and continued under the following Departmental names: Department for Communities and Local Government (DCLG), Office of the Deputy Prime Minister (ODPM), Department for Transport, Local Government and the Regions (DTLR) and Department of the Environment, Transport and the Regions (DETR).

If readers wish to make comments on these Technical Notes please contact the Local Government Efficiency and Modernisation Division on med@communities.gsi.gov.uk

OTHER PUBLICATIONS

There a number of publications produced by DCLG's Strategic Partnering Taskforce (SPT) relating to service delivery partnerships and collaborative arrangements between local authorities. These notes form part of this series. Other publications include:



In addition, there are companion volumes which include:

- *Strategic Service Partnerships – a Decision Makers' Guide* (ODPM 2003) – this booklet is aimed at members and chief officers to guide them through decisions and implementation.
- *Structures for Service Delivery Partnerships – Technical Notes* (ODPM 2002, updated by DCLG 2006) – the notes deal with the structures that local authorities might wish to contemplate using in service delivery partnerships with the public, private or voluntary sectors.
- *Employment and Partnerships – Technical Notes* (ODPM 2003, updated by DCLG 2006) – a guide to the many complex employee issues that arise and that need to be addressed to secure successful change in partnering situations. A technical addendum has been produced to update these notes to reflect the position as at December 2005.
- *The Partnership Assessment Tool* (ODPM 2003) which provides an approach to a health check of the partnering relationship.
- *Risk Management in Partnerships – Technical Notes* (ODPM 2003) provides a framework for risk management at both the strategic and project level in service delivery partnerships. This document also provides generic risk registers to assist project managers in developing and enhancing their authority's approach to risk management.
- *Payment Mechanisms – Technical Notes* (ODPM 2004) provides advice on how reward processes should be approached and installed.

All the above documents are summarised in a companion document to provide a brief overview of all the knowledge and advice produced by ODPM in support of service delivery partnerships and shared services.

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CHAPTER 1

Introduction

- 1.1 Local authorities have a long history of providing services jointly or in collaboration with one another, normally on a cost-sharing basis, for example purchasing consortia and joint service consortia. But such developments have been fragmented and have not been the standard way of developing services. The current efficiency agenda puts shared service delivery in the centre ground of Government policy. No longer can public bodies automatically take the stance that undertaking any activity on a standalone basis is the most cost effective way of going forward.
- 1.2 Local authorities have a strategic leadership role that can act as a catalyst to the facilitation of joined up shared service delivery not only between local authorities but also other public service organisations. The Local Government Association (LGA) sees local area agreements (LAAs), Local Service Partnerships (LSP) and Local Public Service Boards as the strategic framework within which this might be accomplished.
- 1.3 The publication does not present arguments for shared services but takes joint working as a sensible way forward for many activities. It takes the view set out in the Cabinet Office e-Government report 'Transformational Government – Enabled by Technology' 2005. *A new Shared Services approach is needed to release efficiencies across the system and support delivery more focused on customer needs. Technology now makes this far easier than ever before. Shared services provide public service organisations with the opportunity to reduce waste and inefficiency by re-using assets and sharing investments with others. Tackling this will be a major challenge.*
- 1.4 This publication sets out how local authorities can collaborate in order to deliver shared services. It is a technical document but also gives practical assistance to those embarking on projects for shared service delivery. It builds on practical knowledge and will help practitioners to select the structure that best fits their needs.
- 1.5 ***Structures for Collaboration and Shared Services*** is a development of ODPM's publication *Structures for Service Delivery Partnerships*, first published in October 2002 and updated by DCLG in 2006. The format is similar and is designed as a technical aid. It explains what structures can be used and sets out the issues to be considered. Where there is common ground between the two publications *Structures for Collaboration and Shared Services* repeats the content or cross-references as appropriate.

1.6 In summary these technical notes:

- set the landscape within which a local authority can provide services to another local authority or any other organisation or person;
- describe the various models available under current legislation, together with the characteristics of the model, whether there are tax implications etc, as well as the technical pros and cons of each model;
- include, as far as practical, information about how working with other public sector bodies for shared service delivery should be approached; and
- link the structures to DCLG policies.

WHAT IS A SHARED SERVICE?

1.7 The term 'shared service' is closely linked to partnering and collaboration. In the Local Government *National Procurement Strategy* (ODPM 2003) these terms were described in the following manner:

'Partnering' means the creation of sustainable, collaborative relationships with suppliers in the public, private, social enterprise and voluntary sectors to deliver services, carry out major projects or acquire supplies and equipment.

The benefits of the partnering approach include:

- better designed solutions
- integration of services for customers
- access to new and scarce skills
- economies of scale and scope
- investment
- community benefits (including jobs and local economic effects).

'Collaboration' describes the various ways in which councils and other public bodies come together to combine their buying power, to procure or commission goods, works or services jointly or to create *shared services*.

Collaboration is a form of public/public partnership. Its major benefits are economies of scale and accelerated learning.

1.8 Using this definition, shared services and joint working are seen as an element of collaboration. However, collaboration may not extend to shared service delivery and joint working. For instance, collaboration on strategy alignments across a region can include shared service delivery and joint working but it often does not, and presently, strategy discussions are far more common than joint working or shared service delivery.

1.9 These distinctions are important as they underpin understanding and in determining, for example, the fiscal incentives that exist to support various models and the choice of structures that may be employed.

- 1.10 These technical notes cover the principal ways that shared services can be provided. This is not to say other ways do not exist or may not develop. For instance, national, sub-regional or regional shared service issues are not addressed specifically however, the structures set out in this publication would continue to be relevant. Innovative practices are certain to develop as shared service delivery gets embedded in the way that the public sector delivers services.
- 1.11 For the purposes of the technical notes a spectrum of approaches for collaboration and shared service delivery have been categorised by reference to increasing levels of collaboration and commercialisation. The categorisation starts with internal co-operation and extends to fully combined operations and then to trading. Why trading? Collaborative working between local authorities will often be on a shared risk basis but some authorities want to go further and take trading risks and provide services to other authorities on commercial terms for profit, and possibly loss.
- 1.12 The categorisation used for *Structures for Collaboration and Shared Services* is set out below.

Category	Description
A	Centralisation and standardisation within a single local authority e.g. shared personnel and HR activities
B	Collaboration between authorities on strategic approaches
C	Collaboration between bodies for: <ul style="list-style-type: none"> • The better delivery of services e.g. sharing of expertise or cost reduction • Improved procurement including joint commissioning • Collaborative Procurement and Working with Other Public Bodies
D	Franchise approaches: <ul style="list-style-type: none"> • Local authorities providing direct support to another • One local authority providing methodologies to others
E	Joint service delivery between local authorities
F	Joint service delivery between different types of public body
G	Commercial trading for the profitable exploitation of assets, skills or location to provide new income for the benefit of the initiating authority or authorities
H	Commercial trading in partnership with a private sector partner

1.13 Some commentators have suggested an alternative form of categorisation such as public/public collaboration on:

- Strategy and planning
- Commissioning and procurement
- Scrutiny
- Front-office (contact centres, joint service centres)
- Back-office (transactional processing)
- Back-office (support services)
- Frontline delivery (refuse collection, care services etc)

1.14 This approach has not been adopted here as the emphasis of this publication is on structures for shared service delivery and not a wider agenda. It should be noted that Commissioning and Procurement (Category C) and the front-office and back-office activities could be a number of Categories, principally Category C, E and F depending upon the level of shared/joint working that is being adopted.

CHAPTER 2

Legal Framework

POWERS

- 2.1 This section introduces the legislative framework that underpins collaboration and shared services and explains what can be achieved under each power and the essential features that need to be considered.
- 2.2 This section addresses the:
- Local Authority (Goods and Services) Act 1970;
 - Local Government Act 1972 and delegation;
 - Local Government Act 2000 section 2 (well-being) and section 19;
 - Local Government Act 2003 and trading & charging;
 - Local Authorities (Goods and Services) Act 1970;
 - EU procurement legislation.
- 2.3 The Local Authorities (Goods and Services) Act 1970¹ has allowed local authorities to provide goods and services to other authorities, to secure the benefit of economies of scale. The 1970 Act restricts the type of services provided and the bodies with whom an authority can trade.

¹ For London authorities there is a similar power contained in section 5 London Government Act 1963.

Extract from Local Authority (Goods & Services) Act 1970

An Act to make further provision with respect to the supply of goods and services by local authorities to certain public bodies, and for purposes connected therewith. [May 29, 1970]

Supply of goods and services by local authorities

1. (1) Subject to the provisions of this section, a local authority and any public body within the meaning of this section may enter into an agreement for all or any of the following purposes, that is to say:

- the supply by the authority to the body of any goods or materials;
- the provision by the authority for the body of any administrative, professional or technical services;
- the use by the body of any vehicle, plant or apparatus belonging to the authority and, without prejudice to paragraph (b) above, the placing at the disposal of the body of the services of any person employed in connection with the vehicle or other property in question;
- the carrying out by the authority of works of maintenance in connection with land or buildings for the maintenance of which the body is responsible.
- and a local authority may purchase and store any goods or materials which in their opinion they may require for the purposes of paragraph (a) of this subsection.

- 2.4 This section enables a local authority to make an agreement on appropriate terms with another local authority or public body (as prescribed by regulations) for the supply of goods, materials, services, transport and equipment and to carry out maintenance works.
- 2.5 Historically, there has been uncertainty as to the extent to which local authorities can trade for profit under the 1970 Act. The view has been expressed on behalf of the Department of the Environment, now DCLG, which suggested local authorities may use the powers conferred by the 1970 Act to trade for profit, trading not being limited to the deployment of surplus capacity (letters by Paul Rowsell to Local Authority Associations, December 7, 1995). A more restricted view had previously been expressed in Audit Commission Technical Release 23/90, based on legal advice which they had obtained.
- 2.6 In *R. v. Yorkshire Purchasing Organisation (YPO), ex p. British Educational Supplies Ltd*, (The Times, July 10, 1997), the Court of Appeal held that this subsection did enable the YPO (a joint committee of 12 local authorities established to supply products to educational institutions) to stock goods and then attempt to sell them; the YPO was not restricted to acquiring and storing goods in respect of which they had a firm contractual commitment for onward supply.
- 2.7 The aim of the 1970 Act was to enable public bodies to benefit from bulk buying and the consequent economies of scale; this would be best achieved if the purchasing authority was free to go out into the market place to buy in such quantities and at such times as sound business sense dictated. Furthermore, supplies to locally managed schools (LMS schools) were lawful as they remained local educational authority schools. However, contractual call-off sales arrangements were *ultra vires*. Here, customers ordered goods directly from the supplier but benefited from a discount negotiated by YPO with the

supplier. This could not be construed as the provision of “administrative services” by YPO within section 1(1) (b).

- 2.8 Whether or not a local authority may trade under the 1970 Act has now largely been overtaken by the power to trade contained in the Local Government Act 2003. However, it still may be relevant for those local authorities who are not able to trade due to failing to attain the required level of performance in the CPA (i.e. they are not excellent, good or fair).
- 2.9 The 1970 Act gives local authorities a wide power to collaborate for the principal areas covered in the legislation. In summary these are:
- the supply of goods;
 - the provision of any administrative, professional or technical services;
 - the use of equipment; and
 - works of maintenance.
- 2.10 The 1970 Act allows local authorities to collaborate with other local authorities and other entities prescribed as public bodies by statutory instrument under the 1970 Act.
- 2.11 The list of public service and related organisations by the numerous statutory instruments that have been issued since 1970 is extensive and includes most of the public sector and many voluntary bodies that local authorities work with on a regular basis.
- 2.12 The 1970 Act does not allow local authorities to collaborate with the private sector, individuals or voluntary bodies that are not prescribed as public bodies. Separate accounts have to be kept for activities carried out under the 1970 Act.

SECTION 101 OF THE LOCAL GOVERNMENT ACT 1972 AND SECTION 19 OF THE LOCAL GOVERNMENT ACT 2000 – DISCHARGE OF FUNCTIONS

- 2.13 Local authorities have the authority to delegate (arrange for the discharge) of their functions by another local authority. This can extend to delegating to the executive of another authority. Extracts from the legislation, namely Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 are reproduced below.

101. (1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions:

- (a) by a committee, a sub-committee or an officer of the authority; or
- (b) by any other local authority.

[(1A) A local authority may not under subsection (1)(b) above arrange for the discharge of any of their functions by another local authority if, or to the extent that, that function is also a function of the other local authority and is the responsibility of the other authority's executive.

(1B) Arrangements made under subsection (1)(b) above by a local authority ("the first authority") with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that,:

- (a) the first authority are operating or begin to operate executive arrangements, and that function becomes the responsibility of the executive of that authority; or
- (b) the authority with whom the arrangements are made ("the second authority") are operating or begin to operate executive arrangements, that function is also a function of the second authority and that function becomes the responsibility of the second authority's executive.

(1C) Subsections (1A) and (1B) above do not affect arrangements made by virtue of section 19 of the Local Government Act 2000 (discharge of functions of and by another authority).]²

(2)...

(3) Where arrangements are in force under this section for the discharge of any functions of a local authority by another local authority, then, subject to the terms of the arrangements, that other authority may arrange for the discharge of those functions by a committee, sub-committee or officer of theirs and subsection (2) above shall apply in relation to the functions of that other authority.

(4)...

(5) Two or more local authorities may discharge any of their functions jointly and, where arrangements are in force for them to do so

- (a) they may also arrange for the discharge of those functions by a joint committee of theirs or by an officer of one of them and subsection (2) above shall apply in relation to those functions as it applies in relation to the functions of the individual authorities; and
- (b) any enactment relating to those functions of the authorities by whom or the areas in respect of which they are to be discharged shall have effect subject to all necessary modifications in its application in relation to those functions and authorities by whom and in the areas in respect of which (whether in pursuance of the arrangements or otherwise) they are to be discharged.

(14) Nothing in this section affects the operation of section 5 of the 1963 Act or the Local Authorities (Goods and Services) Act 1970.

19. (1) The Secretary of State may by regulations make provision for or in connection with enabling an executive of a local authority (within the meaning of this Part), or a committee or specified member of such an executive, to arrange for the discharge of any functions which, under executive arrangements, are the responsibility of the executive:

- (a) by another local authority (within the meaning of section 101 of the Local Government Act 1972), or
- (b) by an executive of another local authority (within the meaning of this Part) or a committee or specified member of such an executive.

(2) The Secretary of State may by regulations make provision for or in connection with enabling a local authority (within the meaning of section 101 of that Act) to arrange for the discharge of any of their functions by an executive of another local authority (within the meaning of this Part) or a committee or specified member of such an executive.

- 2.14 One or more local authorities engaging in collaboration or shared services arrangements may delegate one or more of their functions to:
- another local authority (Section 101 (a) Local Government Act 1972);
 - the executive of another local authority (Section 19 and 20 Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000; or
 - a joint committee (Section 101(b) Local Government Act 1972).
- 2.15 A local authority will not be able to delegate its functions to any other person or entity other than to a person or entity designated by an Order under the Deregulation and Contracting Out Act 1994.
- 2.16 As can be seen a local authority, choosing to delegate formally, passes responsibility for the function to the other authority. Schemes of delegation are matters for local agreement and can be varied or changed or cancelled by any of the parties involved. This is very different from a contractual arrangement when responsibility for the function remains with the awarding public body. Schemes of collaboration should be set in a formal context and it would be sensible for those schemes incorporating delegation to set a minimum time for the arrangement and established process for changes to be considered and made. There is no reason why delegations cannot be made by several authorities to a single authority or to a joint committee.
- 2.17 In order to facilitate shared services local authorities often consider using a company or limited liability partnership as an alternative to a joint committee. Local authorities should consider a number of European Court of Justice decisions on the use of such corporate entities in the light of the EU procurement rules. These are explained in more detail in the section on the EU procurement rules. The EU procurement rider will ordinarily apply to a contractual relationship with a distinct entity unless the relationship has certain characteristics. To summarise these are:
- the local authority (or authorities) must exercise a control over the entity which is similar to that which it exercises over its (their) own departments **and** the entity carries out the essential part of its activities with the controlling authority (or authorities);
 - the entity must be wholly owned by the authority or authorities (any private sector participation, however small, will nullify the exception); and
 - the entity should not have commercial objects (the increasing commercial nature of the entity coupled with likely increasing independence will tend to nullify the exception)

- 2.18 The above is likely to rule out the use of a limited liability partnership, as such is by its very nature, a commercial entity (similar arguments may rule out a company limited by shares except where it has community rather than commercial purposes). Delegation of functions cannot be made to a company other than pursuant to an Order under the Deregulation and Contracting Out Act 1994. A briefing note produced by the 4ps in February 2005 is reproduced below.
- 2.19 The briefing note refers the involvement of the private sector in a joint venture with the public sector. It demonstrates that such an involvement can result in an activity involving service delivery between the joint venture and the public sector body being subject to a procurement exercise.

4ps Briefing Note published February 2005³

Private sector participation in Public Sector entities

European Court of Justice (“ECJ”) narrows the scope of exemptions to the Public Procurement Rules

- In a judgment on 11 January 2005 the ECJ held that the participation of a private undertaking, even as a minority shareholder, in the capital of a legally distinct company in which the contracting authority is also a participant, means that the company is potentially subject to the public procurement rules.
- The case (Case C-26/03) concerns the City of Halle in Germany, which asked a company in which it has a 75.1% shareholding to draw up plans for a waste disposal plant and to enter into a contract for the management of waste. The City of Halle decided not to hold a tender process. A waste disposal competitor objected on grounds that the award of the contracts breached EU procurement rules, and the ECJ agreed on the basis that the award of a public service contract by a public authority to an undertaking in which both the public and the private sectors have holdings is not exempt from procurement rules. The ECJ rejected the City of Halle’s argument that the undertaking was an emanation of the City of Halle due to the control it exerted over the undertaking by virtue of its majority stake in the entity.
- This decision applies to all legally distinct entities which operate as if state-owned but which are partially privatised. Public authorities cannot seek to rely on the argument that such an entity is an ‘in-house’ operation and outside the scope of the procurement rules. The rationale behind this decision is that private capital investment in an undertaking distorts the public interest objectives of free and undistorted competition and the principle of equal treatment. Any contract by a contracting authority with that entity must be subject to the Directives.
- The Halle decision narrows the scope for using the ‘in-house’ exception to the public procurement rules envisaged in the Teckal case (C-107/98). Teckal established that the procurement rules do not apply where a public authority uses its own administrative, technical and other internal resources to carry out a contract (the ‘in-house’ exception), and that a public authority is exempt from the procurement rules where it contracts with an undertaking over which it exerts control similar to that which it exerts over its own internal departments.
- Following Halle, any involvement of a private undertaking in the equity share capital of that separate entity, regardless of the percentage of the holding, and even if that equity participation does not carry with it any control or influence or veto over the actions of that separate entity, will invalidate an undertaking’s classification as ‘in-house’ and means that the public procurement processes must be followed before contracts can be awarded.

³ Available on 4ps website at www.4ps.gov.uk

- Note that a public authority can still carry out an activity itself without advertising that contract. For example, it is open to a public authority to decide that it will operate its own waste collection and disposal service, employing staff and using vehicles and other assets which it owns and controls. There is no requirement under the public procurement rules to open these services up to competition. It can also continue to do this through a wholly owned company, such as an arms length housing company, provided, of course, the Teckal criteria are satisfied.
- The judgments should also not affect purely public/public arrangements such as where two or more local authorities decide to join forces to procure more efficiently and effectively or where one authority agrees to act as a procurement agent on behalf of several other authorities to harness the benefits of joint procurement and provide a more attractive package to the market. These activities would be undertaken to attract the market, not avoid competition.
- Equally the judgments should not impact on current national procurement initiatives which involve the establishment of separate entities as an integral part of the overall procurement approach. Both the NHS LIFT and Building Schools for the Future initiatives involve the establishment of special purpose companies in which the private sector will have a majority holding and public sector participants hold minority stakes. These companies (and the private sector majority stakeholders) are only established following an EU compliant process.
- The Teckal and Halle judgments are, however, the most significant in recent Commission activity relating to public private partnerships (PPP). At present there is no specific system under Community law governing the many different possible forms of PPPs and the Community rules on awarding public contracts are applied to PPPs with differing degrees of intensity. There appears to be moves to address this:
 - in May 2004 the European Commission issued a Green Paper on Public Private Partnerships focusing on whether the Community rules on public procurement and concessions should be adapted to accommodate the development of PPPs and to ensure legal certainty and effective competition;
 - the ECJ's concern to resist the creation of new exceptions to the application of the procurement rules was reinforced in *Commission v Spain*, (ECJ 13 January 2005). The ECJ decided two things: firstly that any arrangement between legally distinct contracting authorities may be subject to the Directives and the Teckal exemption will only apply where the prescriptive criteria of that judgment are met; and secondly the test for whether or not an entity is a contracting authority is the test set out in the three cumulative conditions of Directives 93/36 and 93/37 (one of which considers the commercial character of the entity), and an entity's private law status does not preclude it from classification as a contracting authority. This means that an entity which includes an element of commercial trading in its activities, but which was not established for this purpose, may be subject to the public procurement regime; and
 - the European Commission has decided in twenty cases against seven Member States either to refer those Member States to the ECJ or to formally request them to correct breaches of EU public procurement law.
- These new developments in both ECJ case law and Commission activity appear to have the effect of narrowing the scope of the exemptions to the EU Procurement regime. The most important lesson to be drawn from these cases is the need to consider carefully the potential impact of the EU Procurement regime on any proposed partnership arrangement particularly where it is intended that a new entity is to be established in which the private sector have a stake.

February 2005

SECTION 2 OF THE LOCAL GOVERNMENT ACT 2000

- 2.20 Section 2 of the Local Government Act 2000 is helpful in facilitating collaboration between authorities as it allows local authorities to provide staff, goods, services and accommodation to any person in connection with their power to promote the economic, environmental and social well-being of their area. This power is constrained by a requirement within the 2000 Act which prevents authorities from exercising their 'well-being' powers in order to raise money, as raising money was not seen as a well-being purpose.
- 2.21 This is a widely drawn power and it will enable most aspects of collaboration to take place not only between local authorities and designated public sector bodies but with a broader range of organisations, perhaps local community groups that are new or were not covered in any of the designations that have been issued from time to time under the Local Authority (Goods and Services) Act 1970. It is also the power that is used to support the creation of LLPs and other corporate bodies.

LOCAL GOVERNMENT ACT 2003 – TRADING AND CHARGING

- 2.22 Whilst most forms of shared service arrangement will be 'not for profit' and costs and income will be shared on an agreed basis, some will be commercial arrangements. In addition, some forms of shared service activities may evolve from being a shared service arrangement between two or three core authorities into arrangements where there are foundation partners and business partners i.e. partners who use the services on offer because they are well provided and represent good value. It is likely that business partners would join as a consequence of a form of procurement.
- 2.23 Section 93 of the 2003 Act now provides that all local authorities can raise charges for the supply of goods and services where these are provided in connection with a function of the Council. These charges cannot exceed cost i.e. a contribution of cost incurred but may not generate a surplus over a three-year period. Section 93 is useful in allowing a local authority to recover costs in respect of a shared service where one of the partners is not a public body designated under the Local Authority (Goods and Services) Act 1970.
- 2.24 Until the enactment of section 95 of the 2003 Act there had been comparatively few legal arrangements whereby local authorities could trade i.e. act in a manner which is designed to generate income and profit. Statute has allowed a few exceptions, for instance, the disposal of surplus computer capacity. However, since the introduction of Section 95 the landscape has begun to change especially for better performing local authorities (i.e. those currently achieving a "top three" CPA rating who can trade for profit as entrepreneurs, if they wish.⁴)

4 See also the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (SI 2004/1705) which applies to local authorities and two other Orders (SI 2004/2307 and 2004/2573) which apply to Fire Authorities

- 2.25 The guidance for using the trading power published by ODPM⁵ (the Trading Guidance) lists the following statutory provisions as the principal sources for previous trading activities:
- Civic Restaurants Act 1947
 - Local Authority (Goods & Services) 1970
 - Section 145 of the Local Government Act 1972 (Provision of entertainments)
 - Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (Recreational facilities)
 - Section 38 of the Local Government (Miscellaneous Provisions) Act 1976 (power to provide computers and computer facilities and making use of spare capacity)
 - Orders made under section 150 of the Local Government & Housing Act 1989 (i.e. HMOs Charges for Registration Schemes, Recovery of Costs for Public Path Orders, Charges for Land Searches and Charges for Overseas Assistance and Public Path Orders)
 - Section 95 now allows goods and services to be made available under trading, i.e. at a commercial rate in connection with a function, for example, well-being purposes. This power allows local authorities to sell goods and services to private companies, individuals or to any other party including other public sector bodies. This means that a local authority entering into shared service arrangements can do so on: a cost-sharing basis (under the 1970 powers) or on a fully commercial basis (under the section 95 powers).

LOCAL GOVERNMENT AND HOUSING ACT 1989⁶

- 2.26 Until very recently this Act had a major impact on the selection and form of many local authority collaborations, shared services and joint venture vehicles, as it imposed a very onerous regime intended to restrict their ability to incur capital expenditure. The Local Government Act 2003 has removed these controls, and all that remains is a set of controls which extend some of the governance and accountability requirements faced by local authorities to certain companies. For this reason, it is still necessary to address the issue of the classification of the company and in particular whether it is “controlled”, “public sector influenced”, “private sector influenced” or a “minority interest company” (as governed by Part V of the Local Government and Housing Act 1989 and the Local Authority (Companies) Order 1995).

5 General Power for Local Authorities to Trade in Function Related Activities Through a Company – Guidance on the Power in the Local Government Act 2003 (ODPM 2004) This guidance can be found on the DCLG website www.communities.gov.uk

6 For more detail see ODPM’s *Structures for Service Delivery Partnerships – Technical Note: (2002, updated by DCLG in 2006)*

2.27 The relevant definitions are:

- A “controlled” company is a company which is effectively a subsidiary of the local authority (where the local authority controls meetings of the company and/or the board of directors);
- A “public sector influenced” company is a company in which the local authority or personnel associated with the local authority have 20% or more of total voting rights, there exists a “business relationship” between the local authority and the company, and the local authority exerts, or has the right to exert, a dominant influence over the activities of the company;
- A “private sector influenced” company is where the first two tests but not the third test in a “public sector influenced” company are satisfied; and
- A “minority interest” company is one in which a local authority holds an interest that does not give rise to the company being an “Influenced Company”.

2.28 The reasons why the distinctions are important revolve around the proprietary controls, and are summarised in the table below:

Propriety Controls – Summary

Provisions and article number	Controlled companies	Arm's length companies	Regulated Influenced companies
Identify LAs on documents – 4(1)(2)	Yes	Yes	Yes
Director's remuneration etc should not exceed that from the LA – 5(1)(a) & (b)	Yes	Yes	Yes
Disqualified councillors barred from directorship – 5(2)	Yes	Yes	Yes
Ban on party political publicity – 5(1)(c)	Yes	Yes	Yes
Provision of information to auditors – 6(a) and (b)	Yes	Yes	Yes
Provision of information to councillors – 7(1) and (2)	Yes	Yes	Yes
Provision of financial information to the authority – 8(1) and (2)	Yes	Yes	Yes
Audit Commission's approval of auditor – 9	Yes	Yes	No
Public inspection of minutes of meetings – 10(1), (2) and (3)	Yes	No	No

EU PROCUREMENT LEGISLATION

2.29 Whilst local authorities have the legislative power to collaborate this does not mean that local authorities can assume that they can undertake work for other authorities without the question of procurement arising and certainly they need to have regard to their fiduciary responsibilities to secure best value and value for money. It is the basic stance of DCLG and the UK

government that value for money should be sought in all public procurement and that this is to be achieved through competition unless there are compelling grounds to the contrary. Authorities must therefore consider how far such a 'compelling case' can be made in respect of collaboration and how if they decide to adopt a collaboration strategy whether they are obliged to follow a formal procurement approach.

2.30 The EU procurement rules make no distinction between the bodies that may be providing services to another. It is irrelevant whether the best provider might be a private or a public sector provider, the issue is whether there is in fact a provision under a Contract by an economic operator. Commonly, collaboration between authorities has not been regarded as procurement, however, this should not be assumed and local authorities are encouraged to take their own legal advice, especially where in other circumstances they would be preparing for a procurement exercise.

2.31 To what extent do the EU procurement rules apply to collaboration between local authorities or shared services arrangements?

2.32 The application of the EU procurement rules depends upon the extent to which the arrangements between the local authorities (and other public bodies) involve entering into public contracts for the provision of services (or indeed, on occasions, works) above the threshold for the application of the rules.

2.33 There is no specific exemption from the EU procurement rules where one public body (or contracting authority) contract with another public body (or contracting authority) for services, works or supplies where there is a public contract. The EU procurement rules must be complied with in relation to the award of all public contracts above the relevant threshold. The Consolidated Directive defines a public contract as a contract for pecuniary interest (consideration in English law) concluded in writing between one or more economic operators and one or more contracting authorities which has as its object the execution of works, supply or products and provision of services.⁷ Economic Operator is defined in the Consolidated Directive as a contractor, supplier and service provider. These latter terms are defined as national or legal persons and/or bodies which offer on the market, respectively, the execution of works and/or a work, products or services. The Public Contracts Regulations 2006 which implements the Consolidated Directive defines a public contract by reference to either of public services, public supply or public works contract. These in turn are defined by reference to contracts in writing for consideration under which a contracting authority engages a person to provide services, goods or works. The 2006 Regulations refer to a persons whereas the Consolidated Directive an economic operator. However, throughout the 2006 Regulations (including in the definitions of the various procedures) there are references to economic operators. The latter are defined in a similar way to the Consolidated Directive.

2.34 Whether or not the contract has been interpreted widely by the ECJ,⁸ the definition of a contract is likely to cover documents which ordinarily may fall short of being a contract, for example, a memorandum of understanding.

⁷ See Article 2 of the Consolidated Directive 2004/18/EC

⁸ See ECJ Teckal case (Case C – 107/98)

- 2.35 Where a public body (or contracting authority) performs an activity or task using its own resources without calling upon outside entities, there is no contract and the EU procurement rules need not be applied. However, it needs to be determined where one contracting authority ends and another begins. For example, it is assumed that a shared services arrangement between central government departments (e.g. DCLG and DfES sharing an HR system) will not involve a public contract between those bodies (i.e. the respective Secretaries of State), as both are part of the Crown and are indivisible. On the other hand, where a regional or local body (e.g. a local authority) is involved, here will be a separate legal entity.
- 2.36 As indicated previously, there are an array of powers which enable local authorities to provide services to other local authorities (and indeed other public bodies), particularly the Local Authorities (Goods and Services) Act 1970 and the trading powers under Section 95 of the Local Government Act 2003. These powers have generally so far been exercised without recourse to the EU procurement rules. This is probably because the service provision has been undertaken without a formal contract or, more likely, because the value of the services has been below the threshold for the application of the rules to the services. However, these powers are being increasingly used by local authorities in contracts with other local authorities for:
- shared services; and
 - service improvement (where a high performing local authority may provide services to improve a poor performing authority e.g. franchising).
- 2.37 Where local authorities seek to engage in shared services activities, the activities they are undertaking need to be examined to determine whether the contract between them for shared services is a contract to which the EU procurement rules apply. That is, it has to be determined whether the arrangement amounts to a public contract and/or otherwise the arrangement is not one to which the EU procurement rules apply. The EU procurement rules should not apply where:
- there is an administrative arrangement between the local authorities;
 - the local authority (or local authorities) contract with an entity over which it exercises a control which is similar to that which it exercises over its (or their) own departments and the entity carries out the essential part of its activities with the controlling authority (or authorities);
 - the local authorities are involved in the alignment of processes rather than a contract for services; or
 - the local authorities establish a central purchasing body. Although the constant restrictive interpretation by the ECJ of the EU procurement rules should be borne in mind, there may be occasions where the local authority may not be construed as “offering on the market” and thereby not an economic operator.

- 2.38 Where local authorities (or indeed other contracting authorities) collaborate in shared services arrangements and, where permitted to do so, delegate one or more of these functions to the other, then the EU procurement rules should not apply to such administrative arrangements. This is because firstly, the delegating local authority has divested itself of the decision making on that function to the other authority as opposed to that other authority providing services and/or, secondly, that the other authority is given an exclusive right to provide the services (as local authorities can only delegate by law to another local authority). The latter is a specific exemption to the application of the rules.⁹ However, local authorities should not use this exemption for an improper purpose to circumvent EU procurement rules.
- 2.39 The EU procurement rules apply where a local authority concludes a public contract with an entity distinct from it. However, the position may be different where a local authority (or more than one local authority) forms an entity to contract to deliver services and the local authority (or authorities) exercises a control which is similar to that which it exercises over its (or their) own department(s) and the entity carries out the essential part of its activities with the controlling authority or authorities.¹⁰ This exception is limited and effectively only applies to contracting with wholly owned entities and the introduction of a private sector third party to the entity is likely to nullify the exception as the local authority (or authorities) will no longer control the entity in the same way as its (or their) department(s). In the *Stadt Halle* Case, where the local authority owned 75.1 percent of the capital in a company to whom it granted a waste contract, the ECJ determined that the local authority did not exercise sufficient control. Similarly in the *Brixen* case,¹¹ where the local authority had converted a special undertaking to a company, in doing so the company had become increasingly independent and market orientated making the local authority's control tenuous. Finally, as a more obvious example the EU procurement rules were deemed to apply to a contract between a public body and an entity which was wholly owned at the time of the contract but in which a 49% stake was subsequently sold (the stages in the transaction as a whole had to be looked at).¹² Generally, subsequent case law has confirmed that the two tests in *Teckal* must be applied strictly and as this is derogations from EU principles the burden of proving the two conditions is on the local authority. The *Brixen* case confirms that the very nature of the company can militate over the first condition. This is likely to mean that a limited liability partnership or a general trading company is unlikely to be capable of being brought within *Teckal*.
- 2.40 Some shared services activities may involve two or more local authorities aligning their processes by pooling their resources, people, assets and equipment and, as a consequence, reducing the resources and necessarily the cost. This may involve, for example, employees from each local authority sitting side by side in a contact centre (working on both their and the other local authorities' activities/tasks). Access may be granted to each other's hardware and software (and any consents required for this being obtained).

⁹ See Article 18 of the Consolidated Directive 2004/18/EC and Regulation 6 (l) of the Public Contracts Regulations 2006

¹⁰ See ECJ cases of *Teckal* (Case C – 107/98) and *Stadt Halle* (Case C – 26/03)

¹¹ Case C – 458/03

¹² *Commission v Republic of Austria* (Case C – 29/04) Judgement 10 November 2001

Essentially, the overall activities are the same, it is just that, overall, less people are doing them. In which case there will not be a procurement of services as such as any contract entered into would regulate how the authorities work together. Where any additional hardware, software or services are required, then the local authorities will procure such in accordance with the EU procurement rules.

- 2.41 Where a local authority provides services to another local authority (for example, as above to improve that other's services, for example in franchising), as opposed to sharing services, then again the position is dependent upon whether or not the local authority is providing the services under a public contract. Again the EU procurement rules should not apply where it is administrative rather than a contractual arrangement, for example, they involve the delegation of functions (see paragraph 2.38 above) or where the arrangement falls short of service provision (e.g. where there is a mere secondment of employees).
- 2.42 Where the shared services involve shared or joint procurement, then one or other of the local authorities could be established as a central purchasing body which could then procure on behalf of the named participants in the arrangement. This arrangement would be particularly useful where a joint procurement is proposed (for example five districts in a county jointly procure an ICT solution by one acting as a central purchasing body). However, care needs to be taken with the drafting of the OJEU advertisement to ensure that other local authorities are able to join in later.¹³
- 2.43 However, it should always be borne in mind that as a consequence of recent case law¹⁴ even where services are Part B services (or indeed where the value of the services is below the relevant threshold) or outside of the rules e.g. public services concessions then the local authority still needs to apply the EC Treaty principles of equal treatment and non-discrimination on the grounds of nationality. These principles imply, in particular, an obligation of transparency in order to enable the local authority to satisfy itself that the principles have been complied with. This obligation of transparency consists of ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed (obviously in the case of contracts with a value below the threshold a degree of proportionality should be taken into account).
- 2.44 Private sector contractors with existing service contracts with local authorities have been exploring how they might extend their remit to provide the same or similar services to other local authorities. Other than service provision which is not material in the light of the subject matter of the existing contract (i.e. it is not a material variation) or (subject to complying with the EC Treaty principles of transparency and non discrimination) below the threshold value for service contractor, such service provision will need to be procured by the local authority benefiting from the services in accordance with the EU procurement rules.

¹³ See Article 1 (10) Directive 2004/18/EC

¹⁴ See ECJ Case of Telaustria (Case C – 324/98)

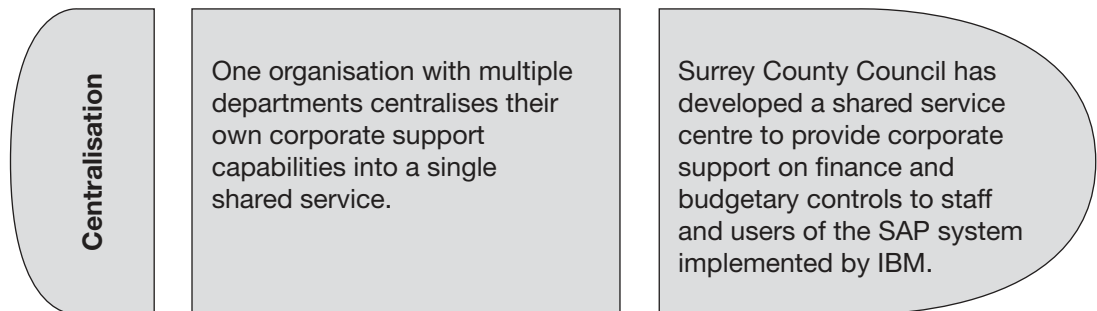
CHAPTER 3

Models for Shared Services

- 3.1 This section elaborates on the approaches suitable for shared services that have developed. The models may be perceived as a set of evolutionary steps. Starting with examination of shared services within a single local authority and gradually transforming working practices so by category E and F there is fully developed joint working which may for some authorities allow for consideration of trading as envisaged in Category G and H. There can be no set timeframe for this transformation as much will depend on local circumstances and the nature of services, for some the optimum position may be reached by collaborative procurement and for others by joined-up working.
- 3.2 These are the categories of shared services arrangements identified in Section 1.

Category	Description
A	Centralisation and standardisation within a single local authority e.g. shared personnel and HR activities.
B	Collaboration between authorities on strategic approaches
C	Collaboration between bodies for: <ul style="list-style-type: none"> • The better delivery of services e.g. sharing of expertise or cost reduction. • Improved procurement including joint commissioning • Collaborative Procurement and Working with Other Public Bodies
D	Franchise approaches: <ul style="list-style-type: none"> • Local authorities providing direct support to another • One local authority providing methodologies to others
E	Joint service delivery between local authorities
F	Joint service delivery between different types of public body
G	Commercial trading for the profitable exploitation of assets, skills or location to provide new income for the benefit of the initiating authority or authorities
H	Commercial trading in partnership with a private sector partner

CATEGORY A – CENTRALISATION AND STANDARDISATION WITHIN A SINGLE LOCAL AUTHORITY E.G. SHARED PERSONNEL AND HR ACTIVITIES



- 3.3 Many local authorities, particularly large authorities have evolved over many years. As a consequence, systems are both duplicated and inconsistent between services and sometimes within the same service. Even where systems have been reorganised and standardised, the arrangements for such coordination have not been consistently applied. For these authorities, shared services can be a term applied to rearranging procedures so that they are performed on a common basis. This approach may be centralisation but the emphasis of this model is standardisation on a shared set of improved and cost-effective arrangements.
- 3.4 Whilst the focus of shared services for this publication is activities between two or more public bodies, for many larger local authorities seeking to standardise procedures within a single authority can be a higher priority that leads to step change in performance. For these authorities a strategic partnering approach with a private sector provider is an appropriate option to consider.¹⁵

THE SURREY COUNTY COUNCIL EXPERIENCE

- 3.5 One authority that has tackled this issue is Surrey County Council. Surrey County Council has entered into a strategic partnership with IBM to transform the council into an efficient, customer-focused service organisation. The Council wants to become a more flexible, efficient organisation and more responsive to the evolving needs of service users.
- 3.6 The Council has grown incrementally to have more than 24,000 employees, a budget of nearly £900 million pounds and serves a population of more than one million. As each department developed its own systems and processes, the Council became more inflexible with a patchwork of disparate systems supporting non-standard processes. In cases where systems and processes were integrated, the use of non-standard integration techniques meant that as the Council grew, so did the complexity of its infrastructure.
- 3.7 Surrey County Council needed to re-orient its processes to make itself more responsive to citizens and businesses. To achieve this, the Council created a strategy known as “People First” under which business processes would be

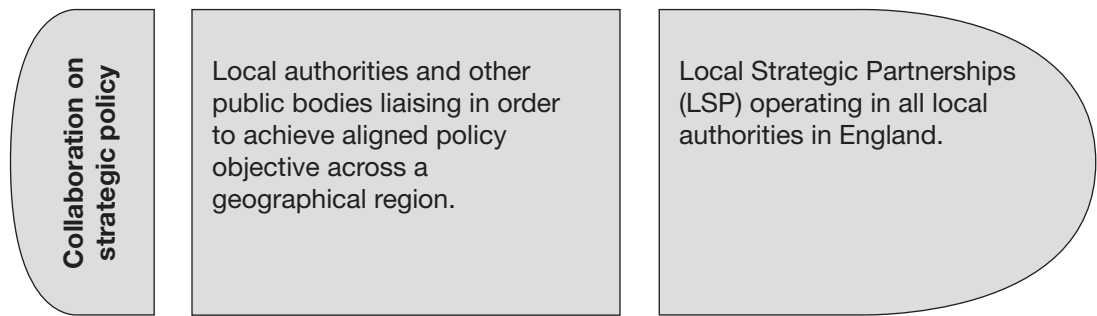
¹⁵ See for example the material prepared by the former ODPM's Strategic Partnering Taskforce available on DCLG's website at <http://www.communities.gov.uk>

standardised around citizens' needs. The goal is to create a streamlined user experience by redesigning processes and integrating them end-to-end. The plan aims to improve operational efficiency by providing staff with a single view of each citizen interacting with the Council. The People First initiative seeks to eliminate the waste and inconvenience of departmental overlap. The initiative also aims to ameliorate the possibility of social service issues falling through departmental cracks.

- 3.8 Under the plan, the disparate platforms running across the County are to be replaced with a single shared-services infrastructure that would be used by all units. By simplifying the Council's applications infrastructure, the plan would facilitate the end-to-end integration necessary to improve services.
- 3.9 The initial focus was to improve the most basic day-to-day processes, such as procurement, budgeting and reporting, and improve their efficiency. By lessening the burden posed by these non-core tasks, the Council seeks to efficiently capture the value of its staff, and deliver better performance and more value to its customers.
- 3.10 By standardising its core systems and processes, HR, procurement, property and finance, the Council expects to achieve a step change increase in the productivity of Council staff. By spending less time on non-core tasks like ordering supplies, officers can devote more of their time delivering value to the public, effectively doing more with less. All told, the Council expects to achieve cost savings in excess of £50 million over a ten-year period.

"The efficiencies and cost savings unleashed by the solution make us better able to adapt to a more demanding, dynamic and budget-constrained operating environment, as well as deliver more value to our stakeholders. By helping us to fundamentally change the way we do business, our strategic partner has proven to be an invaluable team mate." Debbie Ellis, Director of customer and staff relations, Surrey County Council.

CATEGORY B – COLLABORATION BETWEEN AUTHORITIES ON STRATEGIC APPROACHES



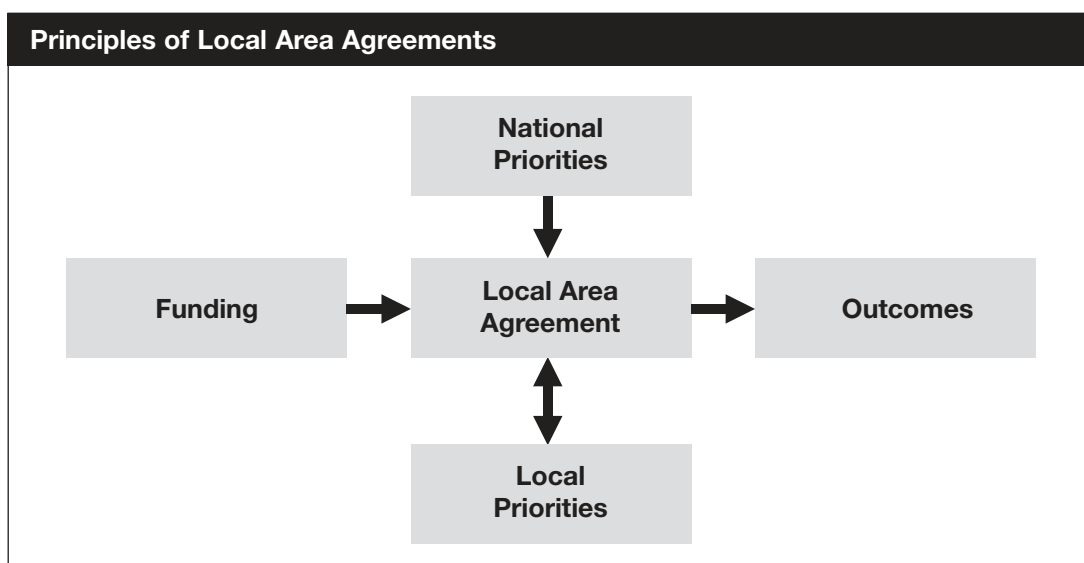
- 3.11 Local authorities have to collaborate with other agencies to achieve their strategic objectives. There is no single way for liaison to work and it occurs at every level, for example, between officers, members, public bodies and can be service or issue-related. Development of strategic approaches is an essential stepping stone to collaboration for service delivery as the discussions reveal common agendas and trust develops between the individuals and organisations alike. This foundation must be in place before further progress in joint working can be achieved.

LOCAL STRATEGIC PARTNERSHIPS

- 3.12 Since 2001 the Government has required local authorities to participate in local strategic partnerships (LSP). A LSP is a single non-statutory, non-executive body that:
- brings together at a local level the different parts of the public sector as well as the private, business, community and voluntary sectors;
 - enables different initiatives and services to support each other and work together;
 - operates at a level which enables strategic decisions to be taken;
 - is close enough to individual neighbourhoods to allow actions to be determined at community level; and
 - is aligned with local authority boundaries.
- 3.13 LSPs are seen as having an important role in tackling key issues for local people such as crime, jobs, education, health and housing which require a range of local organisations to be working together. Whilst there are successful partnerships involving local government, local providers of other public services (such as health, the police, the Employment Service and the Benefits Agency), and local businesses and voluntary organisations will need to work together to tackle some of the biggest challenges. These include social exclusion and the renewal of our most deprived neighbourhoods and which demand concerted and co-ordinated effort across all sectors. The Government wants LSPs to work with local people to achieve these goals.

LOCAL AREA AGREEMENTS

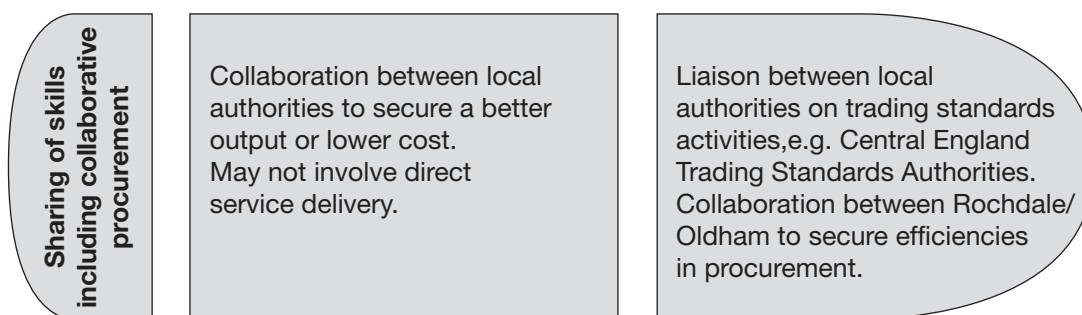
- 3.14 Local Area Agreements (LAAs) are providing new opportunities for pooled resources to deliver key local and national priorities. It is expected that by 2007 that all authorities will be engaged in a LAA along with their other public sector partners. LAAs simplify the number of additional funding streams from central government going into an area, help join up public services more effectively and allow greater flexibility for local solutions to local circumstances.
- 3.15 They are agreements struck between Government, the local authority and its major delivery partners in an area, working through the Local Strategic Partnerships. They are structured around four blocks:
- children and young people;
 - safer and stronger communities;
 - healthier communities and older people; and
 - economic development and enterprise.
- 3.16 LAAs are designed to help devolve decision making, move away from a “Whitehall knows best” philosophy and reduce bureaucracy. They are one of the first products of the Government’s 10-Year Vision strategy. LAAs are being driven through by the local authority in partnership with the local strategic partnership (to ensure engagement of local partners). However, the usual rules on local authorities being permitted to delegate decision making only to a limited amount of persons under section 101 of the Local Government Act 1972 (see section above) are equally applicable to arrangements under LAAs. As a consequence the local authority cannot delegate decision making on budgets to a Local Strategic Partnership. Negotiations are overseen by the respective Government Office and signed off by ministers. Below is a summary diagram showing the principles of LAAs.



CATEGORY C – COLLABORATION FOR BETTER SERVICE DELIVERY, SHARING EXPERTISE, COST REDUCTION AND PROCUREMENT

3.17 This category relates to collaboration between local authorities for:

- the better delivery of services e.g. sharing of expertise or cost reduction; and
- procurement including joint commissioning.



The Better Delivery of Services: Sharing of Expertise and Cost Reduction

3.18 Significant cost savings and efficiencies can be achieved by local authorities collaborating with other local authorities in sharing essential back-office services and undertaking routine transactions, for example human resources and finance support services and revenues and benefits. The nature of the activity and processes involved are generic and nationally defined, rather than specialist to each of the local authorities. The professional disciplines of staff involved are capable of being exported across local authority boundaries. The services may be provided by one local authority as the lead authority (involving some staff transfer and/or redeployment to front-line services) or otherwise, by local authorities collaborating together leaving the employees in situ and each re-aligning their processes taking advantage of economies of scale to achieve redeployment of some resources to front-line services. Examples of this are becoming more apparent as clusters of local authorities articulate a joint business case for collaborative work.

3.19 The relationship between the local authorities will need to be regulated by a contract either for services or co-operation. Where authorities are using assets which only others have a right only to use, e.g. leased premises or equipment or software, then care will need to be taken to ensure that sufficient rights exist to use those assets and all requisite consents have been obtained.

3.20 The collaboration may involve the introduction of private sector expertise. Such expertise will be procured in accordance with the EU procurement rules. It may be jointly procured (i.e. both local authorities directly contract with the private sector provider) or procured by one authority as the local authority (with the local authority “stepping down” the benefits and burdens to the other local authorities). The local authorities may alternatively form a company to contract with the private sector provider. In which case where the company has significant obligations to the private sector provider those obligations will need to be guaranteed by the member or shareholder local

authorities. Where there is a profit- or gain-sharing element to the arrangement the local authorities, or the company owned by the local authorities, may establish a joint venture company or a Limited Liability Partnership with the private sector provider. Such a joint venture company may subsequently be used for trading with others, including public sector bodies following a compliant tender process or private sector entities.

- 3.21 Joint working and collaboration may also be achieved using the “hub and spoke” or incremental approach as explained under Category F (Joint Working via Procurement).
- 3.22 Local authorities have many skilled officers that carry out professional services but few have all the skills that they need. Collaboration allows local authorities to access skills that one authority may have available and they can be symbiotic, e.g. a reciprocal arrangement whereby an officer in one district specialises in one subject and another in a different district specialises in a separate subject. This might occur in legal services where one council has a licensing expert and another council has an expert in litigation; an agreement could be reached under the 1970 Act powers for a sharing of resources.
- 3.23 One area where collaboration is seen as essential is in the regulatory services such as trading standards and environmental health. This area was studied by Philip Hampton who reported to the Treasury in March 2005 on *Reducing Administrative Burdens: Effective Inspection and Enforcement*. It highlighted the need for greater co-ordination to establish better consistency of service throughout the UK and between both local government and central government.

Collaborative Procurement Including Joint Commissioning

- 3.24 The Regional Centres of Excellence have been established to drive improvement in procurement practices across local government and to assist in identifying efficiency gains. By sharing experiences, local authorities can deliver better services for the same money or the same services for less; one of the ways that this can be achieved is by better coordination of procurement.
- 3.25 Examples of where coordination of procurement can give more efficient ways of working include:
- greater standardisation of requirements leading to more familiar contract documents with fewer bespoke variations;
 - synergies and reduced duplication from public sector service providers working together on common objectives;
 - challenging requirements on service provision and improving demand forecasting;
 - forward planning and programming of works and services;
 - driving improvements through supply chain management;
 - sharing of intelligence and performance data to assist effective benchmarking;

- greater use of current and future framework arrangements and call-off contracts to achieve economies of scale, including joint contracts and shared services;
- improved professionalism of the procurement operation, cutting local overhead costs;
- development of common measures of efficiency;
- sharing of resources and facilities;
- sharing of best practice in procurement strategies and/or forms of contract;
- collaborative pilot projects;
- addressing cultural differences across the industry.

Case study – improved accountability

Collaborative working can provide greater transparency in the processes for prioritisation and decision-making. There may also be direct benefits from reduced overhead costs and the provision of a ‘seamless’ service to the customer.

Partnership In Action (PIA) was established in 2000 as a joint working agreement under Section 31 of the Health Act 1999 between Barnsley MBC and Barnsley PCT¹. The agreement covers integrated planning, commissioning and provision of services for people with mental health problems, children and young people, people with learning disabilities, people with physical disabilities or sensory impairment, older people and people with drug, alcohol and tobacco problems. Governance of the partnership is formalised through client boards with delegated powers.

The partnership has:

- Facilitated collaboration on efficient and flexible use of resources including estates.
- Benefited service users and carers by integrated services delivering integrated care packages.
- Improved Independent external assessments of the performance of the two organisations.
- Assisted Barnsley in attracting support for a range of pilots and programmes, such as In Control, Direct Payments, Individual Budgets, and Children’s Trust Pathfinder.

¹ See www.barnsley.nhs.uk/PartAct/

Collaborative working – greater ‘buying power’

Economies of scale result from procuring services in larger volumes. Wider ranging contracts may also offer greater flexibility to cope with changing demands.

Successful collaborations include local authority purchasing consortia such as the Yorkshire Purchasing Organisation². The YPO is the largest formally constituted local authority purchasing consortium in the UK with an annual turnover well in excess of £160 million. A management committee of elected representatives from its 13 constituent authorities governs the YPO. The YPO despatches 400,000 orders a year from its main warehouse, mainly for low value, high volume goods.

Local authorities in North East England are collaborating on the procurement of salt for winter maintenance. Substantial savings are being realised from suppliers dealing with one coordinated procurement effort.

² See www.ypo.co.uk/online/index.asp?s=about

Collaborative working – better use of resources

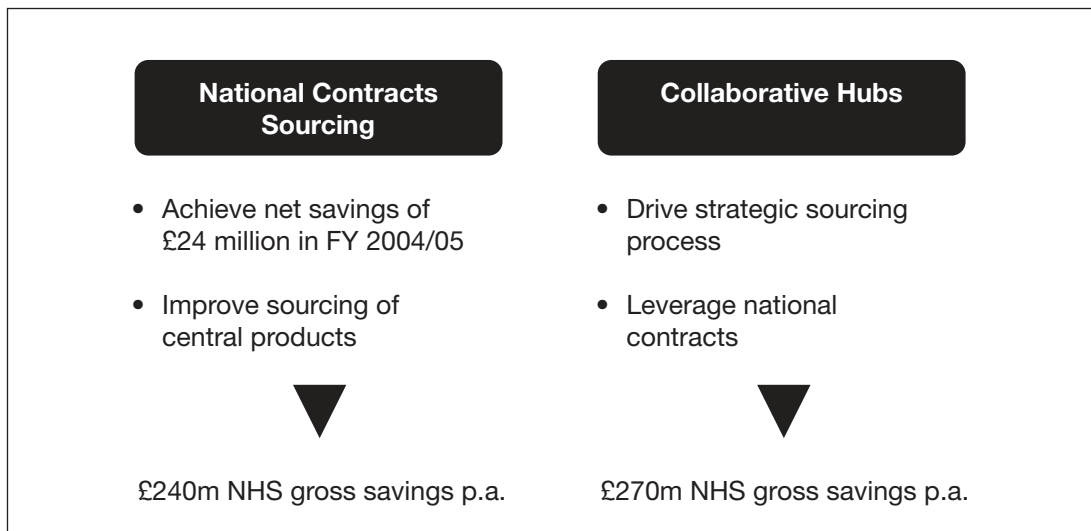
Better value can be gained from contracts by identifying shared goals and making more effective use of resources. Integrating operational functions that are currently carried out separately may also result in direct savings on expenditure.

Established in 2002, London Marketplace³ is working to develop ‘traditional’ E-Procurement, such as E-Catalogue purchasing, together with more innovative solutions, including electronic invoicing, and the use of purchase cards. Also, in a first for local government, e-Auctions have been used for electricity and computer purchasing. Data shows the boroughs are generating savings of between 40% and 75% on the cost of routine items bought through London Marketplace, compared with traditional methods.

³ See www.nepp.org.uk

Collaborative Procurement and Working with Other Public Bodies

- 3.26 As an example of new approaches to collaboration, it is worth looking at the experience and approach taken by the NHS.
- 3.27 Every year the NHS spends over £14 billion on non-pay goods and services, making the NHS a key player in local and regional economies. As with local government all too often in the past, variations in purchasing practices and a lack of a strategic approach to supplier management have meant opportunities to improve value have been lost.
- 3.28 In June 2003, the Department of Health (DH) established the Commercial Directorate (CD) to lead on its dealings with the independent sector and to improve commercial management practices. This led to the NHS Supply Chain Review that identified potential savings of £500 million a year through strengthening the national procurement function, accelerating the implementation of collaborative procurement and streamlining the distribution of goods throughout the NHS. The NHS Supply Chain Excellence Programme (SCEP) was established as an outcome of the review, with the aim of maximising value for money and of improving frontline patient care.



- 3.29 The collaborative hubs are regionally based and will be procuring many items that are common to local authorities. The procurement practices available allow the contract notices to be drawn up to embrace all public sector bodies including local authorities. Local authorities are able to work with the NHS collaborative hubs in order to achieve economies and cost reduction. Such collaboration is sensible and can be expected to increase over many branches of the public sector.
- 3.30 An outline of a process for undertaking collaborative procurement is set out below:

Outline of process for undertaking collaborative procurement

1. Identify a commodity/service for potential collaborative procurement.
2. Identify interest in the commodity area (i.e. universities and other organisations receiving public funding interested in participating as purchasers).
3. Investigate the availability of any existing, applicable contracts and assess their suitability.
4. Identify volunteer lead organisation (this is the body that would be the administrator for the participating organisations in carrying out the procurement and would sign off the framework agreement and lead subsequent contract management). Note that this lead organisation must have the powers to lead the procurement, that is, it is acting *intra vires* in leading the collaborative procurement and that it is also *intra vires* for each of the participating organisations. This lead organisation should also have a significant and real demand for the commodity identified.
5. Create a commodity group that should comprise both commodity specialists and procurement professionals, either from, or representing, participating organisations to take forward the procurement on behalf of the participants. There should be an adequate representation of the participating organisations (i.e. those organisations identified at 2 above).
6. The Commodity Group shall:
 - a) Draw up a contract strategy and specification and confirm the details with the participating organisations (e.g. potential commodity volume, spend on commodity, requirements, suppliers currently used, any special conditions, site specifics).
 - b) Utilising the commodity volume information, conduct a viability test – i.e. evaluate the marketplace for the commodity to establish the contracting format that would be most likely to deliver beneficial outcomes (e.g. national, regional, cross-consortium, cross-sector), and based on supplier availability, capacity etc, determine whether the contract should be divided into lots; ensure sufficient interest to proceed from participating organisations.
 - c) Determine the procurement option and contract form (e.g. framework agreement or collaborative contract).
 - d) Draw up specification and agree evaluation model and lead organisation's terms and conditions (which should be made available for scrutiny by participating organisations).
 - e) Post OJEU notice, to include: members / potential participants (suggested wording): "Contracting authorities and entities who are in receipt of public funding such as government departments, NHS bodies, agencies, local and emergency authorities (police and fire), educational establishments, registered charities and utilities that have a requirement in the commodity. The lead organisation wishes to establish new framework contracts with providers for use by or on behalf of such contracting entities"; estimated expenditure in the region of a set amount; lots; which procedure; award criteria; the lead body.
 - NB In the event of the commodity being non-OJEU, the lead organisation should follow its own internal regulations and procedures (although a limited competition will be advisable).
 - f) Decide on who to invite to tender based on criteria outlined in the OJEU notice (except where 'Open' procedure is used).
 - g) Invite and subsequently evaluate bids based on criteria outlined in the OJEU, the ITT documentation and the evaluation model.
 - h) Decide on the successful bid/s taking into account the agreed evaluation criteria and then prepare a full evaluation report, outlining the reasons for their decision.

- i) Distribute evaluation report to all participating organisations and seeks agreement of each participating organisation to accept the successful bid/s on their behalf.
 - j) Successful bid/s accepted as a framework agreement awarded by lead body (or a collaborative contract if that option applies).
 - k) OJEU award notice sent.
 - l) Draft a formal contract for each supplier and obtain supplier and lead organisation signatures to this contract. Circulate contract details to Purchasing Manager of each participating organisation.
7. Notification of award sent to participating organisations and to any contract database
 8. Contract Management. The commodity group continues in existence to review the performance of the contract, e.g. to seek and act upon feedback on performance from participating organisations. It should also monitor the volumes and values of business generated via the contract – any significant increases in business volume or value should be reviewed to ensure continued compliance with the scope of the contract as notified in the initial OJEU notice. One named individual from the commodity group, to be nominated as Contract Manager. Contract Manager to agree any contract variations after full consultation with the commodity group and participating organisations if deemed necessary.
 9. Re-tender towards end of contract period.

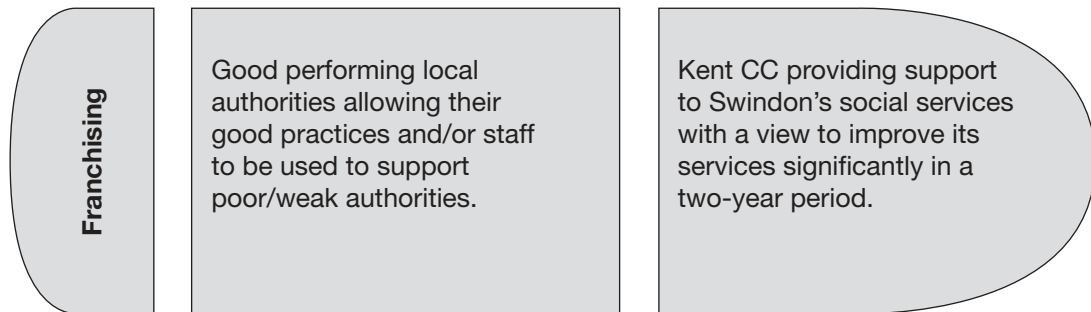
3.31 Local Authorities involved in collaboration with other local authorities will need to consider if the EU procurement rules apply to the collaboration. These will involve consideration of the factors outlined in Section 2 (EU Procurement). In particular, the authorities will need to determine whether there are any services being provided under a contract and if so, whether the contract is a public contract.

3.32 Even where the services are Part B services, a proportionate compliant tender process may be required to comply with EC Treaty principles of equality and non discrimination on the grounds of nationality. In addition, where the local authorities decide to set up a company to undertake the collaboration and that company provides services to the local authorities, the company must be wholly owned by the local authorities, “operate as a department” of those authorities and carry out an essential part of its activities with the authorities. Any private sector provider will need to be procured under the EC procurement rules where services are to be provided back to the authorities involved.

CATEGORY D – FRANCHISE APPROACHES

3.33 This is a contractual or administrative structure where:

- one local authority provides direct support to another (or others); or
- one local authority provides methodologies to another (or others).



Franchising in the private sector

3.34 The term 'franchising' has been used to describe many different forms of business relationships, including licensing, distributor and agency arrangements. The more popular use of the term has arisen from the development of what is called 'business format franchising'.

3.35 Business format franchising is the granting of a license by one person (the franchisor) to another (the franchisee), which entitles the franchisee to trade under the trade mark/trade name of the franchisor and to make use of an entire package, comprising all the elements necessary to establish a previously untrained person in the business and to run it with continual assistance on a predetermined basis.

3.36 The principle is simple – some companies choose to grow, not by developing in the conventional way, but by granting a license to others to sell their product or service.

3.37 There are clear advantages to this:

- You don't have to come up with a new idea – someone else has had it and tested it.
- Larger, well-established franchise operations will often have national advertising campaigns and a solid trading name.
- Good franchisors will offer comprehensive training programmes in sales and indeed all business skills.
- Good franchisors can also help secure funding for your investment as well as providing access to discounted stock, e.g. discounted bulk-buy supplies for outlets when you are in operation.

3.38 If aware that you are running a franchise, customers will also understand that you will be offering a service that has been fashioned across a wide base.

- 3.39 Each business outlet is owned and operated by the franchisee. However, the franchisor retains control over the way in which products and services are marketed and sold, and controls the quality and standards of the business.

Franchising in local government

- 3.40 In local government similar concepts can apply (although not always tied to intellectual property rights). Local authorities have aspects of their service package that are capable of being packaged into a franchise operation that can then be sold to other public service bodies (for example the development of a maths teaching pack). It is useful if the intellectual property represented in the package is protected in law, however, this will not always be achievable.
- 3.41 Local authorities also have skilled officers that can be made available to other local authorities. This type of arrangement will be particularly apt where an excellent authority offers to assist a less well performing authority. The legal powers for franchising can initially be found in the 1970 Act. However, as franchising grows it is likely to cease to be collaboration and is likely to gain the characteristics of a trading activity and trading powers in section 95 of the Local Government Act 2000 will become relevant.
- 3.42 Local authorities involved in a franchise arrangement will need to consider if the EU procurement rules apply. This will involve consideration of the factors outlined in Section 2 (EU Procurement). Even where the services are Part B (Part 2) services or the value of the services is below the relevant EU threshold, a proportionate compliant tender process may be required to comply with EC Treaty principles of equal treatment and non-discrimination on the grounds of nationality.
- 3.43 The term “franchise” has also been used in the NHS sector where external managers were awarded a contract to manage certain under performing NHS Trusts.
- 3.44 A form of franchise arrangement has emerged in respect of Kent County Council’s support for Swindon.

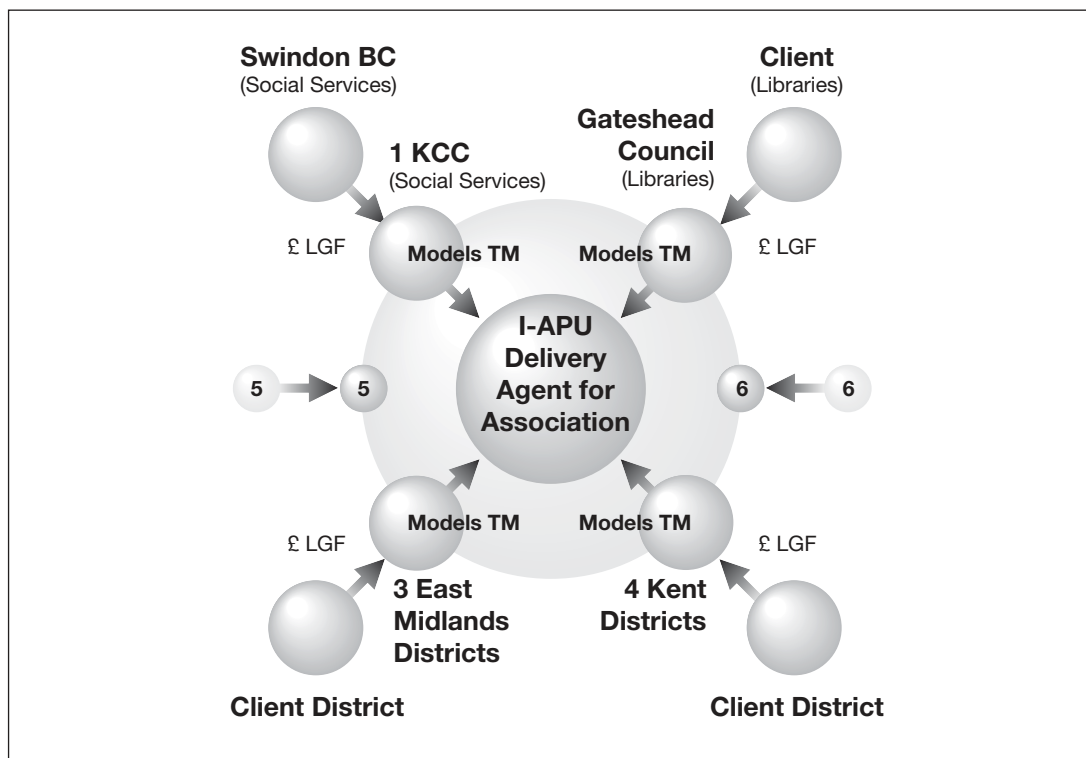
Extract from the Kent County Council website

Local Government Franchising – The Government wants to develop a strong, vibrant, innovative and responsive local government community which will be mutually supportive. An Inter-Authority Partnership Unit was established in 2004/05, hosted by KCC, to work in partnership with other local authorities to improve performance. The first franchising agreement is already in place between KCC and Swindon Borough Council. The aim is to achieve performance improvements in Swindon’s Social Services Department, using the experience and knowledge of managers and staff in KCC’s three star-rated Social Services Directorate in partnership with Swindon’s own managers and staff.

- 3.45 Kent County Council has created what is called The Inter-Authority Partnering Unit (I-APU). The I-APU is a delivery agent for Kent County Council and potentially other excellent authorities. It is a repository of best practice. The I-APU sets out to establish longer-term partnership agreements, which it

describes as franchises, that deploy experienced local authority management practitioners and best practice to deliver radical service improvement outcomes within poorer performing councils. The I-APU wants to develop local government franchising as a new public service process for replicating performance improvement.

- 3.46 Using business format franchising, the I-APU, (the franchisor), plans to grant a licence to an excellent authority (the franchisee), which entitles the franchisee organisation to distribute their best practice 'products' under the Inter-Authority Partnering Unit name. Local authorities that are under-performing can elect to work with a chosen high-performing local authority from the I-APU.
- 3.47 The excellent authorities will participate voluntarily under the umbrella of the I-APU and will work collectively and where possible, collaboratively with the IDeA in taking an efficient and coherent approach to supporting and building a family of authorities providing products and models of best practice, shared standards and good quality provision.

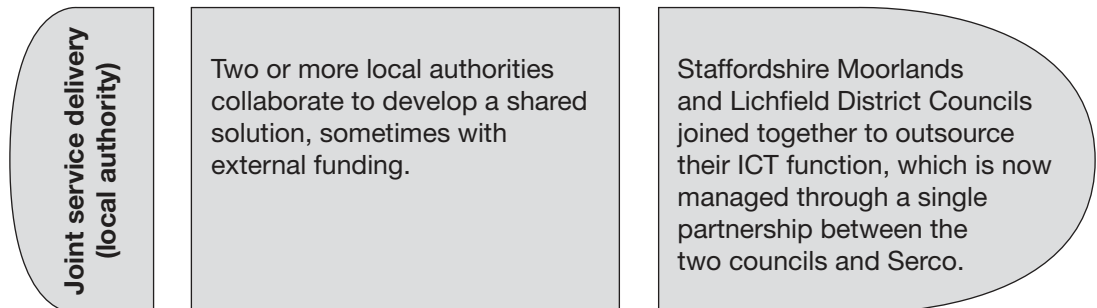


The I-APU website's model for franchising

- 3.48 The I-APU will take care of the administrative, financial, programme management, product development, training and national learning responsibilities. This releases the provider and client councils to concentrate on the delivery and ensures that the local government franchising process becomes more efficient and effective every time it is used.
- 3.49 In recognition of this both the Government and client council contribute funding to I-APU and to the high-performing authority funding for the opportunity cost of their management practitioners placed to support under performing services.

CATEGORY E – JOINT SERVICE DELIVERY BETWEEN LOCAL AUTHORITIES

- 3.50 This category involves collaboration between bodies for the better delivery of services, sharing of expertise or cost reduction.



- 3.51 As with Category C, joint service delivery can lead to significant cost savings. However, rather than collaboration between local authorities in relation to services to them, e.g. support or back-office services, joint delivery involves joint provision to the customer. Full joint working is present when an observer with no previous knowledge of an activity would see a single entity working regardless of the number of public sector bodies involved. Similarly, an employee of one public body would be providing services with no regard to corporate boundaries and divides. Hence, joint working in this sense means more than co-location of offices, for example, the planned area office for Suffolk County Council and St Edmundsbury District Council or joint procurement.
- 3.52 This type of activity will normally be structured either informally through a joint committee, occasionally through a company, or more formally through a contractual arrangement.
- 3.53 Features of Category E activities are:
- no typical size or scope – can be large or small scale;
 - no risk transfer out of the public sector;
 - can be all or part of a service or function;
 - can be a marriage of convenience;
 - difficult to establish where there are historical differences between the authorities and/or political differences;
 - EU procurement rules, unlikely to apply provided neither authority is an economic operator;
 - normally structured either informally through a joint committee and occasionally through a company;
 - can be structured through a contractual arrangement; and
 - tax and financial arrangements are relatively straightforward.

Size and scope

- 3.54 There are many examples of small scale and localised activity, e.g. shared internal audit services, for example, in Cambridgeshire, in Surrey and in Norfolk.
- 3.55 In procurement there has always been collaboration between authorities. Purchasing can be very large, for example, the Yorkshire Purchasing Organisation (YPO) has a turnover of over £500m as previously discussed.
- 3.56 Much of this existing activity stems from the use of Local Authority (Goods and Services) Act 1970 powers and involves local authorities working together for mutual benefit.
- 3.57 An example is set out below.

Nine councils (Blackpool, Cheshire, Chorley, Doncaster, East Riding, Kirklees, Lancashire, Preston, Wakefield) in the north of England, working with private sector partners Best Value Procurement and Lloyds TSB Bank established the Roses Marketplace with government funding in April 2002. The key principle underpinning The Roses Marketplace is the desire of the councils to collaborate so that they can work with a common supplier base, share best practice and share risk.

A good example of collaboration within the marketplace is the Yorkshire Purchasing Organisation (YPO) catalogue. A number of the councils in the Roses Marketplace are members of YPO and have arranged to have the purchasing catalogue put on to the marketplace. This allowed all members of the Roses Marketplace to take advantage of the YPO catalogue.

- 3.58 It is generally acknowledged that whilst there are many instances of collaboration the extent of joint working between authorities is not extensive. This issue was highlighted in the New Local Government Network's publication *Crossing the Boundaries* (2003).

Risk Transfer

- 3.59 In joint service delivery arrangements, the activities that are carried out are at the public sector risk. Generally, there is an agreement to share costs in accordance with a formula. Where cost overruns occur, as they have in connection with computer consortia this can create tensions between the parties as one public sector body or another has to pick up the cost.
- 3.60 In the relatively few examples that exist of joint service delivery, risk and accountability becomes opaque. For example, Adur and Worthing District Councils have a joint refuse collection service. If a freighter injures anyone and there is a claim, as the vehicle is jointly operated then the claim will be against both authorities. This is also a feature of jointly delivered social services and NHS services and consequently an insurance protocol has been developed. See *Employment and Partnership – Technical Note* (ODPM 2004, updated by DCLG 2006).

Part or all of a function

- 3.61 Commonly, the level of joint working is confined to part of a function. There is collaboration across a number of trading standards services. Each service keeps its own officers but they agree to co-operate in areas of examination and share the results.
- 3.62 However, some authorities are beginning to combine the whole of a function's activity, for example, Breckland and Forest Heath Councils have a combined Revenues and Housing Benefits service, and there are currently several joint building control services in operation across the country.
- 3.63 These examples should not be seen as indicating that joint working of this nature is common: it remains the exception. Generally, all of a function is more difficult to set up and deliver than part of a function and collaboration gets increasingly difficult as additional partners are added.

Can be a marriage of convenience

- 3.64 Occasionally authorities work together because it is the only way of making progress. Coventry and Solihull work together on waste disposal in order to obtain an adequate scale of waste to fuel their joint incinerator. Similarly, authorities have to work together to justify running crematoria for a similar reason.
- 3.65 DEFRA is seeking to establish a framework of performance measures and incentives to encourage joint working between waste collection and disposal authorities in two-tier local government areas.

Difficult to establish where there are historical differences between authorities and political differences

- 3.66 Co-operation between local authorities does not happen in some areas because there are entrenched problems between the personalities involved or because of a history, often related to local government reorganisation. For example, a county town may not fully co-operate with the county council. A similar difficulty could exist between a unitary council and the authority from which some of its functions came.
- 3.67 Joint working projects face fraught and difficult discussions before progress can be achieved.

Introduction of Private Sector Provider

- 3.68 The joint service delivery may involve the introduction of a private sector provider. The private sector provider will be procured in accordance with the EU procurement rules. There may be a joint procurement, that is both authorities directly contract with the private sector provider in one contract. Newcastle and North Tyneside have jointly procured a street lighting PFI project as one example of joint procurement with one contract.
- 3.69 Equally there may be a joint procurement with separate contracts. Newham LBC and Enfield LBC have procured a schools PFI project in this way.

- 3.70 Alternatively, there may be a local authority who procures on behalf of the other(s). This occurred in relation to the Bentilee Centre in Stoke-on-Trent where the local authority procured a joint service centre on behalf of itself and the local Primary Care Trust.
- 3.71 The delivery may be through a joint venture company where the local authority wishes to share in the commercial returns. For example, in NHS LIFT and Building Schools for the Future, a joint venture company is formed with a private sector provider to deliver (through a supply chain and using the PFI or conventional funding) respectively, health and social care and secondary school accommodation.

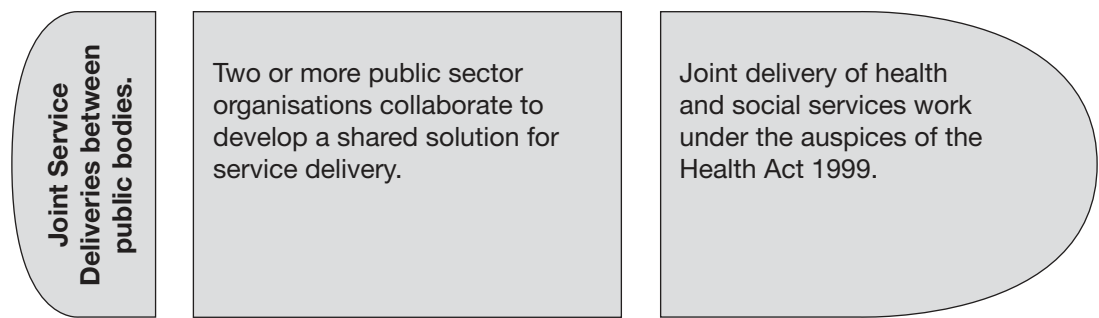
Incremental Model

- 3.72 As explained in Category F below (Joint Working via Procurement) joint service delivery may also be undertaken through a “hub and spoke” or incremental model. This involves the introduction of new services or new local authorities to the original contractual arrangement (with or without a private sector provider). The OJEU advertisement must be sufficiently wide to cover the services and new local authorities. The arrangement may be a contract or a framework agreement.

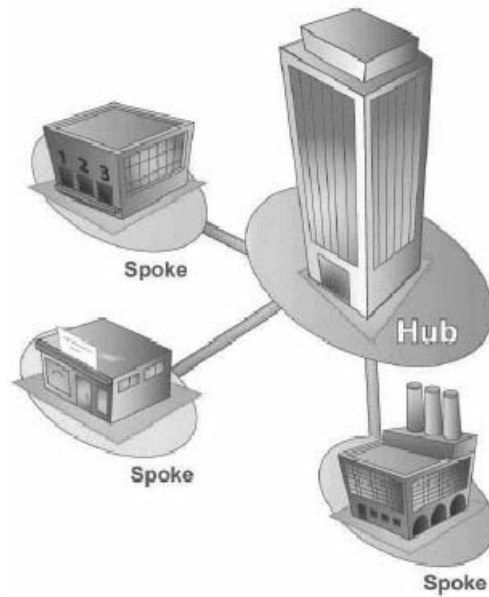
EU Procurement Rules

- 3.73 As with both Category C and D, local authorities will need to consider whether the EU procurement rules may apply. The same considerations for Category G apply as in those categories.
- 3.74 In addition, where the local authorities decide to set up a company to jointly deliver the services the company must be wholly owned by the local authorities and “operate as a department” of those authorities and carry out an essential part of its activities with the authorities if the EU procurement rules are not to be triggered.

CATEGORY F – JOINT SERVICE DELIVERY BETWEEN DIFFERENT TYPES OF PUBLIC BODY



- 3.75 The benefits of joint service delivery between different public bodies are both economic and service related. Ideally, all public sector bodies would provide joined-up services so that there is a single point of access to all services. It is to this that local authorities and other public sector bodies aspire. However, it is a challenging ambition as each public body has its own statutory framework with separate objectives and reporting mechanisms.
- 3.76 Joint working now occurs frequently between the NHS and local authority social services as the legislative framework was changed in 1999 to facilitate and obligate the delivery of a common service. For other services, for example, joint working between the police service and local government, or between central government departments, it is less common.
- 3.77 In order to facilitate joint working between different public bodies it is not easy to find a common governance arrangement that is effective and robust, and gives permanence. For example, most arms of central government cannot participate in companies and local authorities cannot form joint committees covering all types of public bodies. However, contractual partnerships are feasible and so are partnerships formed as a by-product of procurement activity.
- 3.78 This section deals with joint working secured via procurement with all public sector bodies and then examines joint working between local authorities and the NHS.
- Joint Working via Procurement**
- 3.79 Arrangements can be put in place, using the EU procurement directive to facilitate shared service arrangements and procure change agents or advisers to support joint working. Following an initial procurement other authorities would be able to join without a separate and new procurement exercise. Given that all public sector bodies are linked by a set of common obligations, this commonality provides a firm foundation for establishing shared services.
- 3.80 This approach allows what we describe as a ‘hub and spoke’ growth in a partnership.



- 3.81 All this implies that a single public sector body awards a contract but in the contract notice all other potential public sector bodies are listed as being able to participate in that contract. Hence, a contract for front-office services might be let initially for one or two public sector bodies, i.e. the hub but at later dates other public sector bodies could join as and when they were satisfied that the terms and conditions were right for them. One of the difficulties with shared service negotiations is that it is difficult to secure alignment of objectives and achieve acceptable governance for all parties. The private sector when bidding does not know what size the contract may grow into and careful thought needs to be given to commercial issues and reward mechanisms.
- 3.82 This approach avoids those difficulties as those parties who cannot be included at the outset can remain outside the procurement and join at a later time on the basis of a pre-defined set of arrangements and terms.
- 3.83 So it is conceivable that engagement with a range of public sector bodies would emerge at different stages. The parties to the contractual arrangements become akin to the rings of the solar system where a number of public sector bodies join but at times that suit them.
- 3.84 When the other public bodies join no additional procurement is needed as the original EU procurement catered for all the public sector bodies listed in the notice. Getting the procurement right in the first instance can be more complicated for services, for example, Revenue and Benefits or HR services, than for purchasing commodities where we have referred to a similar approach.
- 3.85 This approach could be used by local authorities acting in concert but its benefit goes beyond local government in that it can be used on a pan-public sector basis. Hence, this approach might be adopted if a local authority wants to facilitate joined-up services to all public services in its geographic area. This approach can be regarded as a form of grouped incremental partnerships being created, using a service delivery partnership-type approach.

- 3.86 An alternative arrangement would be to create a contracting body e.g. a joint committee or a company. This new body might issue an EU advertisement for a change agent or technical adviser in its own name with the purpose of providing support to a target range of public sector bodies (this could be widely drafted and include, say, all the local authorities in a geographic region) who would be invited to participate.
- 3.87 Effectively the new body authority will negotiate and enter into a strategic partnering agreement under which the contractor could be committed to provide the services which were the subject of the bid. Other participating authorities will not become a direct party to the strategic partnering agreement over time but will benefit from services through the arrangements that it has with the new body. The strategic partnering agreement will contain a mechanism under which future services to the original, and other local authorities, will be added to the contract, following scoping of the additional services, checking for value for money and being affordable. Effectively, these services will be “bolt ons” to the original contract rather than a variation. Such a structure would have the same status under the procurement rules as NHS LIFT or the model used for Building Schools for the Future.
- 3.88 Alternatively, it could be envisaged that the contracting body could enter into a time-limited framework agreement with the change agent from which other participating authorities could benefit, provided the duration of the framework agreement does not exceed four years.
- 3.89 Similar arrangements to that envisaged above can be put in place under the EU procurement rules to allow contracting authorities to purchase commodities and services from or through a central purchasing body as long as the latter has complied with the rules. A central purchasing body is defined as a contracting authority which acquires supplies and or services intended for contracting authorities or awards public contracts or concludes framework agreements for works, supplies or services.

Local Government and the NHS

- 3.90 NHS bodies generally have fewer freedoms than local authorities to create entities. The Secretary of State does have powers to allow NHS bodies to participate in companies and has exercised this power in connection with partnerships for Health and the LIFT companies. Health bodies also have powers to develop income-generation initiatives.
- 3.91 However the principal arrangements that have been used to facilitate joint working between local government’s social services and health are set out in section 31 of the Health Act 1999.
- 3.92 These provisions contain specific powers to enable NHS Bodies and local authorities to enter into arrangements between themselves (“Partnership Arrangements”) in relation to certain prescribed functions of NHS Bodies (“NHS functions”) and prescribed health-related functions of local authorities (“health-related functions”). Such partnership arrangements may be entered into if they are likely to lead to an improvement in the way in which those functions are exercised.

- 3.93 For the purposes of enabling Partnership Arrangements, an “NHS Body” includes a Health Authority, Primary Care Trust or NHS Trust and a local authority means a district council, county council, metropolitan council, unitary council or London Borough. Although most Partnership Arrangements will involve county councils, metropolitan councils, unitary councils or London Boroughs, district councils are not precluded from participating in such Partnership Arrangements for discharge of their functions, for example, in pursuit of their well-being objectives.
- 3.94 Although the primary enabling powers are contained in Section 31 of the 1999 Act, the detailed implementation is through regulations made pursuant to that section, namely the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (“the 2000 Regulations”). The 2000 Regulations prescribe both the NHS functions and the health-related functions that may be the subject of Partnership Arrangements. The NHS functions and the health-related functions are set out below.

NHS Functions

- 3.95 The function of providing or making arrangements for the provision of the following services:
- Hospital accommodation
 - Other accommodation
 - Medical, dental, nursing and ambulance services
 - Facilities for the care of expectant and nursing mothers and young children
 - Facilities for the prevention of illness, the care of persons suffering from illness, together with the appropriate after-care for such persons
 - Diagnosis and treatment of illness
 - Prevention activities intended to avoid patient admission to hospital
 - Medical inspection at appropriate intervals of pupils in attendance at schools maintained by local education authorities and the treatment of such pupils
 - Provision of advice on contraception, medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptives
 - Dental inspection of pupils in attendance at schools maintained by local education authorities, together with the provision of any dental treatment and education of such pupils in dental health
- 3.96 The provision of medical or dental inspection or treatment or education in dental health of: Senior pupils attending an education establishment other than a school, which is maintained by the authority and at which full-time further education is provided; or any child or young person receiving primary or secondary education in a pupil referral unit, or through some other arrangement, due to the pupil’s illness, exclusion or special educational needs.

- 3.97 Functions relating to the provision of after-care services for a patient, who has attained the age of 16 years, and is liable to be detained in a hospital due to a mental disorder and the belief that there would be a substantial risk of serious harm to the health or safety of the patient, of other persons, or of the patient being seriously exploited if he did not receive such after-care services.
- 3.98 The functions listed do not include: surgery, radiotherapy, termination of pregnancies, endoscopy, use of Class 4 laser treatments and other invasive treatments and emergency ambulance services.

Health-Related Functions

- 3.99 Provisions of the following social services:
- Protection of young people in relation to criminal and summary proceedings, children appearing before court as in need of care, protection or control, committal of children to approved school or care of a fit person and the provision of remand homes, approved schools and appropriate care
 - Provision of residential accommodation for the aged, infirm, needy and expectant mothers in need of care, welfare of persons who are deaf, blind, dumb or otherwise handicapped or are suffering from a mental disorder and the temporary protection of property belonging to persons in hospital or alternative accommodation
 - Provision of facilities for enabling disabled persons to be employed or work under special conditions
 - Provision of welfare and accommodation for mentally disabled persons
 - Research into matters relating to local authority welfare services and functions of local authorities
 - Powers relating to young persons in need of care, protection or control and their protection in relating to criminal proceedings
 - Provision of the welfare of old people
 - Financial and other assistance to voluntary organisations
 - Supervision of ward of court
 - Obtaining information as to the need for and publishing information as to the existence of welfare services
 - Applications by local authorities for revocation or enquiries in relation to custodianship orders
 - Provision and maintenance of resettlement units for persons without a settled way of living
 - Care of mothers and young children including protection, after-care, home help and laundry facilities

- Welfare of the mentally disabled, guardianship, exercise of functions of nearest relative in relation to applications to Mental Health Review Tribunals, together with the appointment of approved social workers
- Burial or cremations of persons dying in accommodation provided by local authorities
- Representation and assessment of disabled person
- Child welfare reports, family assistance orders, inspection of children's homes, research and functions in relation to children's accommodation
- Preparation of plans and assessment of needs for community care services
- Assisting local education authorities in providing educational services
- Assessment of carers and their needs, to provide care and provision of services and vouchers to carers
- Co-operation in respect of (inter-county) adoption
- The functions relating to disabled persons leaving special education, patients suffering from mental disorders or receiving treatment for mental disorders being discharged from hospital
- The duties of local authorities to take into account the abilities of carers (except in so far as any such functions are assigned to local education authorities)
- The functions of local education authorities under the Education Acts
- The provision of grants from local housing authorities towards the cost of works required for facilities for disabled persons in dwellings, houseboats and park homes and in common parts of buildings containing one or more flats
- The allocation of housing accommodation, the provision of free advice and information about homelessness, the prevention of homelessness and assistance to homeless persons through the provision of accommodation, furniture or other goods and the availability of staff support
- Power of the Secretary of State to give financial assistance for regeneration and development of an area, including contributing to economic development, preventing crime, improving housing, social or recreational facilities, providing employment, training, educational or health services and assisting local people with special needs
- Regulatory functions of waste collection or waste disposal in connection with the improvement of the control of pollution
- The functions of providing environmental health services

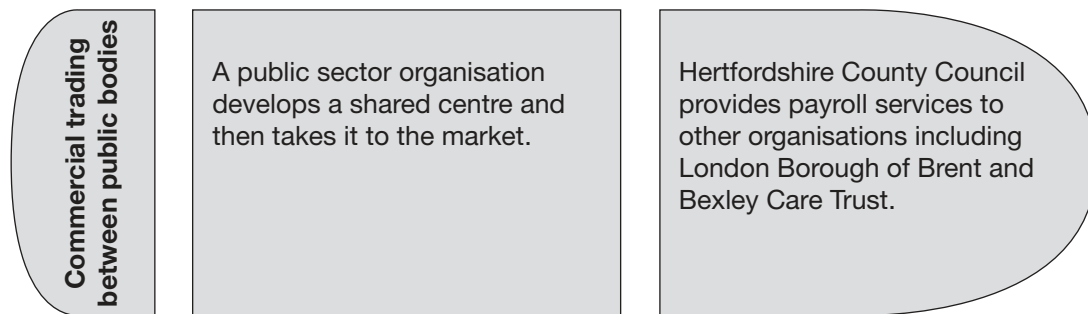
- Provision of road safety information and training, and the maintenance and improvement of highways
 - The provision of appropriate passenger transport, especially taking into account the transport needs of disabled or elderly members of the public and travel concession schemes for travel on public transport
 - Where partners enter into Partnering Arrangements, the functions of charging for residential accommodation for the aged, infirm, needy and expectant mothers in need of care
 - Where partners enter into Partnering Arrangements for the care of mothers and young children, the prevention of illness, the provision of care and after-care, home help and laundry facilities, the functions of charging for such services.
- 3.100 The Partnership Arrangements must fulfil the objectives of the health improvement plan of the Health Authority in whose area the Partnership Arrangements will operate. Before entering into Partnership Arrangements, the partner NHS Body and local authority must consult jointly such persons as appear to them to be affected by the Partnership Arrangements.
- 3.101 One of the principal novel areas of Partnership Arrangements under the 1999 Health Act is that the partner NHS Body and local authority may establish and maintain a “pooled fund”. This “pooled fund” is made up of contributions by the partners and from which either or both partners are entitled to defray expenditure in the exercise of any NHS function or health-related function (the pooled fund can only be operated in respect of these functions and not others).
- 3.102 There are detailed provisions in the 2000 Regulations dealing with the operation of any pooled fund. First, an NHS Trust may not enter into a pooled fund arrangement with a local authority partner unless it obtains the consent of each Primary Care Trust with which it has an NHS contract for the provision of services to persons who will be affected by the pooled fund arrangement. Secondly, where the partners decide to enter into a pooled fund arrangement, they must have an agreement in writing detailing the functions which are the subject of the pooled fund as set out above. The agreement must also contain certain prescribed information in relation to the pooled fund set out below.
- 3.103 The partners must agree which one of them will be the “Host Partner” for the pooled fund. The Host Partner will be responsible for the accounts and audit of the pooled fund arrangement. The Host Partner must appoint a person as the “Pool Manager”.
- 3.104 The Pool Manager is responsible for firstly, managing the pooled fund on behalf of the partners and, secondly, for submitting to the partners quarterly reports and an annual return relating to the income and expenditure in the pooled fund together with other information by which the partners can monitor the effectiveness of the pooled fund arrangement.

Prescribed Contents of a Pooled Funds Agreement

- 3.105 The agreed aims and outcome of the pooled fund arrangements:
- The contributions to be made to the pooled fund by each of the partners and how those contributions may be varied;
 - Details of the NHS functions and local authority health-related functions which are the subject of the pooled fund arrangements;
 - The types of persons and services in respect of which the NHS functions and health related functions will be exercised;
 - The staff, goods, services or accommodation to be provided by the partners in connection with the arrangements;
 - The duration of the arrangements and provisions for the review, variation or termination of the arrangements; and
 - How the pooled fund is to be managed and monitored including the partner who is to be the “Host Partner” for the pooled fund.
- 3.106 The Host Partner must arrange for the audit of the pooled fund accounts and for the Audit Commission to make arrangements to certify an annual return of those accounts. Finally, the partners may agree that an officer of either partner may exercise both the NHS functions and health-related functions that are the subject of the pooled fund arrangements.
- 3.107 The underlying legal basis for the partnering arrangements involves enabling an NHS Body to exercise local authority health-related functions and enabling a local authority to exercise NHS functions, in either case, in conjunction with, respectively, their NHS functions or health-related functions. This enables the NHS Body or the local authority to undertake the other’s prescribed functions or for them to exercise such functions jointly.
- 3.108 Where NHS functions or health-related functions are exercised by the other parties, there must be an agreement in writing between the parties specifying the matters set out above.
- 3.109 Whichever of the NHS Body or the local authority is exercising the prescribed functions, they must report to the other, both quarterly and annually, on the exercise of the prescribed functions which are the subject of the Partnership Arrangements.
- 3.110 Any partner may agree to provide staff, services or accommodation to another partner in connection with the Partnership Arrangements. However, with fixed and current assets the partners need to decide which partner is to retain ownership and/or which partner is to obtain the benefits of the assets on dissolution of the arrangements. There are legal difficulties, in particular, of jointly owning land in that NHS bodies cannot jointly own property.

- 3.111 The partners need also to be cognisant of any VAT consequences of providing services from one to the other. The position of employees may be particularly complex due to the different legislation affecting employees and terms and conditions of employees of NHS Bodies and local authorities. The partners will have to decide how they wish to treat employees. Various options are available; a transfer from one partner to the other under TUPE, the secondment from one partner to the other or one partner retaining the employees and acting as an agent for the other. A transfer, if under TUPE, can bring about issues associated with a “two-tier” workforce since there will be two sets of employees under two sets of terms and conditions. Pension issues also arise as to whether one partner’s employees may be able to join the pension scheme of the other or, if so, at what cost? (E.g. is the pension scheme fully funded?). There will also be VAT consequences for the party benefiting from the secondment.
- 3.112 The partners may form a joint committee to take responsibility for the management of the Partnership Arrangements that may include monitoring and receiving reports and information on the operation of the arrangement. If the relevant local authority partner is operating executive arrangements, then any joint committee may include any member whether or not he or she is a member of the executive of that local authority. Where the partners have formed a joint committee, they may agree that a sub-contractor or member of the joint committee may consider complaints about the Partnership Arrangements made by or on behalf of service users.
- 3.113 Where the partners do form a joint committee, the committee is only for the management of the Partnership Arrangements. As a consequence, the partners themselves retain legal responsibility for the provision of their respective services. There is also no specific power to delegate functions, (which remain with the NHS Body or the local authority exercising the relevant prescribed functions) as opposed to management decision-making.

CATEGORY G – COMMERCIAL TRADING FOR THE PROFITABLE EXPLOITATION OF ASSETS, SKILLS OR LOCATION TO PROVIDE INCOME GENERATION FOR THE BENEFIT OF THE INITIATING AUTHORITY OR AUTHORITIES



- 3.114 Trading is not an activity that has been a common feature of local authority activity. Local act powers exist in some areas allowing trading, for example, Birmingham provided a testing service for the manufacturers in the West Midlands.
- 3.115 On a larger scale, examples exist in airports, bus companies and local authority waste companies. In the mid-1980s and early 1990s local authorities were forced as a consequence of legislation to transfer what had been in-house activities to another business or a new limited company for these activities. These companies have had variable performance but a number have become very successful and some have created large capital receipts for the local authority on disposal of their share interests. Cheshire County Council received a capital receipt of £88m when it sold its interests in the 3Cs company and the Tyneside authorities received a capital receipt of a similar amount for selling 50% of the Newcastle airport business.
- 3.116 This is where the new powers contained in the 2003 Act could have significant impact. New models will emerge but some have already appeared.
- 3.117 Norfolk County Council has formed two companies. In the first instance, the wholly owned company has been formed to carry out direct labour activities for the company and joint venture subsidiary companies have been formed with two district councils. By removing unnecessary depots and standardising on best practice significant cost reductions have been achieved. The second company is providing professional property services and it is forming strategic alliances with authorities in the north-east and north-west of England.
- 3.118 Essex Fire and Rescue Services have formed a trading company to provide trading, disposal of fire appliances and exploitation of specialist knowledge. Bracknell Forest, Newham, Liverpool and Kent have shown interest in using the new powers.

An extract from the Kent Business Centre brochure is reproduced below.

The Kent Business Centre is an exciting public sector initiative that aims to provide local organisations with new and cost effective solutions to the shared challenges of saving administration costs, Gershon and the transfer of resources to the front line.

Commercial Services – it will build on the firm foundations and trust that have already been established. Details of the services currently offered by Commercial Services can be found at www.kent.gov.uk/cs/Commservices/

The Kent Business Centre will deliver back-office professional functions. And the engine is already running – we currently provide a range of corporate services to clients across Kent.

Our offer is unique:

Easy in/Easy out – In general, we will reach agreement by negotiation, set up new services rapidly and allow you to exit at a time that suits you. There will be no need to enter into lengthy procurement activities and no unwieldy penalty clauses.

Competitive prices – Our aim is to achieve even greater economies of scale and cover variable/fixed costs. By improving efficiency overall, cashable benefits can be achieved for our partners. Unlike the private sector, we are not interested in profit.

3.119 Features of Category G activities are:

- Emerging market but potentially can be large or small scale;
- Involves risk taking and unless there is a partner risk remains with the public sector;
- Can be all or part of a service or function;
- Can allow excellent services to be offered to others;
- EU procurement rules will apply if work is undertaken for a public body;
- Will be structured through a company but scope for using Limited Liability Partnerships;
- Require a good business case, careful tax and financial planning; and
- Allow step change in service delivery methodologies.

Emerging Market but potentially can be Large or Small Scale

3.120 Local authorities are encouraged by auditors and legislation to act prudently and with full recognition of risks. Trading of this nature involves making an investment and diverting staff away from delivery of services for the authority into other activities. If losses arise and if service standards are not maintained the local authority is likely to be criticised even if profits are created, but the criticisms would be even worse if losses arose. For this reason, it is likely that local authorities will be cautious about using this power and it will be driven forward by a limited number of enthusiasts.

- 3.121 It is probable that growth will come from:
- direct service operations seeking to expand their customer base;
 - excellent services wishing to offer their services to others especially those that are poorly performing;
 - exploitation of assets or intellectual property rights; or
 - services being provided where there is a failure in the marketplace either because of standards or price.
- 3.122 Growth will be held back if there is an absence of vision of how entrepreneurial opportunities could be exploited and the absence of precedent. In some instances, trading will be seen as a threat to existing businesses and where this is the case it will be controversial.

May Involve Risk

- 3.123 This category involves risk taking and unless there is a private sector partner risk remains with the public sector. The essence of trading is taking risk, investing time and money to make money. Therefore, unless an arbitrage situation exists (a guaranteed profit) a local authority will need to spend to make money later.
- 3.124 This is why the DCLG trading guidance states:

'Local authorities will need to be prudent, in particular, about putting Council Tax payers' money at risk. It is for this reason that the Order requires authorities to prepare a detailed business case before embarking on trading under these new powers, and to have the business case approved by the council before trading starts following a full discussion with the auditor. Local authorities remain bound by general administrative law, legal principles such as Wednesbury reasonableness, and fiduciary duties'.

- 3.125 In some instances local authorities would be wise to consider having a private sector partner on board to exploit the opportunity and take the majority of the risk. The local authority would receive less of the benefit but in many instances would be able to achieve a win/win situation, i.e. more income and no risk. For instance, if Birmingham has intellectual property in its education service, packaging that IPR, marketing it and seeking financial gain could, assuming the authority had a high enough CPA rating, be sold to other countries, individuals and other public bodies at a profit. It may not have the expertise to do that but a private sector partner will.

All or part of a service or function

- 3.126 Trading requires the identification of something that is saleable. Something that you have access to on a repeat basis at a cost that is competitive. It can be a commodity, it can be a service, and it can be the use of an asset or a combination of a range of things. It requires fresh thinking and a degree of original thought. Organisations that are not used to trading are likely to have a narrow vision on what to do and how to use the freedom to enhance the

services on offer. Without an outside catalyst, it is likely that initially services offered will be based on support to other authorities and these could be all or part of a service or function.

Can allow excellent services to be offered to others

3.127 Within the private sector there is a belief that you always need to grow to improve. Excellence is not self-supporting and needs stimulation and refreshment of challenge. Thus, excellent services that are provided by one authority should be offered to others. But what does this mean:

- providing mentoring support to the other authority;
- taking over the whole of the support of the other authority;
- designing a 'how to do it' methodology and providing a self-help solution; and
- providing consultancy services.

3.128 Trading differs from collaboration in many ways but often it means responding to the needs of another organisation as they perceive it and not as the seller does. The purchaser drives the transaction and effectively selects from a menu of choices that sellers have made available.

EU Procurement Rules

3.129 If a local authority responds to OJEU notice to undertake services for another public body it needs to consider the section 95 powers. In this situation it is likely that the local authority is seeking to be an economic operator and the other public body is making a procurement decision. Consequently, any award of that work to the local authority or local authority owned trading company will need to have been dealt with in compliance with the EU procurement rules.

Application of EU Procurement Rules

3.130 Where a local authority establishes a trading company and that trading company has an industrial or commercial character then such will not be a Contracting Authority and will not in itself be subject to the EU procurement rules in any procurement activities. However, where the trading company is engaged by other local authorities in respect of supplies, services or works then such must be following a supplies tender process under the EU procurement rules. Similarly, where the trading company provides supplies, services or works to the local authority owner (whether or not the trading company is wholly owned by the local authority) then the principles in the Teckal case will not apply and such can only be provided following a tender process.

Structured through a Company

3.131 The trading must be structured through a company but there is scope for using limited liability partnerships.

3.132 The power to trade is widely drawn and is subject to restrictions, principally:

- the power must be exercised through a company (within the meaning of Part V of the Local Government and Housing Act 1989);

- the trading must be function-related;
- the power cannot be used to authorise trading in anything which an authority is statutorily obliged to do in relation to a person;
- section 95 trading may also be regulated through the imposition of conditions by order, under section 96 of the Act;
- only authorities within defined categories of the CPA (currently the “top three”) may exercise the section 95 trading power;
- this power cannot be exercised by any Police Authority, the London Development Agency, or authorities when acting in their capacity as fire and rescue authorities;
- production and approval of a business case is a pre-condition; and
- any company established for the purposes of carrying out trading under this section, in which a local authority has an interest, shall be subject to the rules about controlled, influenced, regulated and minority interest companies provided by Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995).¹⁶

3.133 Definitions of a company in Part V include:

- a company limited by shares;
- a company limited by guarantee and not having a share capital;
- an unlimited company;
- a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.

3.134 Any of these forms may comprise a company for the purposes of section 95. However, it seems most likely that the company form taken will be a company limited by shares, which provides more flexibility for trading companies, particularly with regard to distributions of profit and raising risk capital. The choice will have a fundamental impact on how people are employed, and the skills and staff required.

3.135 Whilst trading has to be undertaken through a company as defined above when using section 95 powers this does not apply for other forms of trading. For example, it is likely for larger trading arrangements that the optimum arrangement from a fiscal perspective will be a combination of a company and a limited liability partnership.

¹⁶ Part V of the Local Authorities (Companies) Order 1995 has been repealed in part by the Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 which came into force on 1 April 2004. Although the propriety rules will still apply (see paragraph 3.37 onwards).

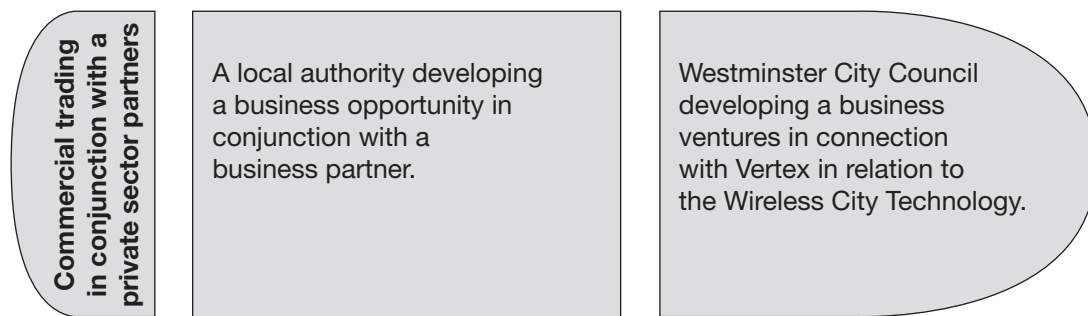
Require Good Business Case, Careful Tax and Financial Planning

- 3.136 Trading will need to be carefully assessed and business plans carefully established. The new trading entity will be fully exposed to commercial risks and the business case and its structure should be carefully considered if it is to secure the best arrangements for the authority, the new business, its staff (retained and transferred) and the finances for both organisations.

Allow Step Change in Service Delivery Methodologies

- 3.137 Over a period of years authorities could specialise in what they do best and get other authorities to provide services that they are less able to provide. Specialist services could be made available across Europe and service delivery could be totally restructured. But this will require support, imagination and early successes and no significant failures.

CATEGORY H – COMMERCIAL TRADING IN PARTNERSHIP WITH A PRIVATE SECTOR PARTNER



3.138 Some authorities may not have the capacity to develop trading as a significant part of their work. As an alternative they can choose to procure a partner to develop their trading ability in the course of the fulfilment of contractual obligations.

3.139 There are a number of ways this could be achieved including:

- procuring a strategic service partner and require that the partner includes business development within the remit of the partnership;
- appointing a business development partner to focus on developing income streams in defined areas;
- seek a business opportunity from reviewing a range of activities to identify latent IPR with an exclusivity arrangement to have the opportunity to develop any business opportunities;
- if an authority had an exceptional methodology, there might be scope for franchising or concessions;
- if trading were to be based on expanded use of assets a strategic property partnership might be considered.

3.140 This arrangement could be structured through a company, partnering contract, limited liability partnership, outsourcing contract. Section 4 sets how such arrangements might work and their advantages and disadvantages.

3.141 Trading with a private sector partner needs a local authority to:

- Establish that it will receive reasonable compensation from its 'tradable' activities
- Ensure that any partner has the capability of creating a relationship that is viable and profitable business
- Ensure that the arrangement will assist in the business transformation of the Council

- Confirm that the partnership can run alongside and complement service delivery
- Give rise to the possibility of a significant additional income stream to the Council
- Evaluate whether the deal gives rise to potential conflicts with other suppliers
- Establish sound governance arrangements.

3.142 There are different ways of developing trading. A local authority can spot its own opportunities or existing trading partners can be incentivised to share commercial opportunities with the Council. Working with existing partners has the benefit of building on established relationships and on the capabilities of the partner. However, not all authorities have existing arrangements of this nature or do not have the level of confidence necessary to allow any established partner to become the entrepreneurial partner that they need.

3.143 In such situations consideration might be given to procuring an entrepreneurial partner. An entrepreneurial partner might support the Council identify opportunities, evaluate them and provide a financial benefit without removing service delivery capability away from the Council.

3.144 If this approach were adopted the following approach might be used to procure the entrepreneur who would work with the Council to identify and market opportunities. The process assumes that the negotiated process might be used and the steps would need to be amended if an alternative procurement approach was adopted.

Step 1 – Confirmation of project scope / vision

- Refine vision, aims and thinking around commercial aspects
- Examine options for adding value using our commercial and business experience

Step 2 – Market Interest to the project

- Define the value of the project and take advice on EU procurement legislation
- Make the market aware of what the Council is considering entering into
- Invite expressions of interest
- Prepare and issue a briefing paper including commercial and financial detail from the Council for the market to respond to
- Assess responses received.

Step 3 – Pre-qualified potential partners

- Develop pre-qualification documents to issue to those organisations responding to the advertisement
- This process will provide the Council with a greater understanding of each organisation's financial, technical capability, economical and the commercial experience of which they would bring to this project.

Step 4 – Procurement documentation (possibly use competitive dialogue or negotiated procedure)

- Production of the procurement document playing particular consideration to the financial and commercial aspects
- Confirm the overall project vision
- Consider a case study approach for potential partners to respond to, providing the Council with a contrast of approaches and an outline of how partners might approach trading opportunities
- Consider any commercial / delivery issues in relation to contractual, joint venture company or Limited Liability Partnership approach
- Identify risk and reward issues
- Develop the evaluation criteria and structure
- Review payment mechanism
- Design a reward mechanism possibly linked to approved business cases to develop trading opportunities
- Sensitivity modelling of performance scenarios to test commercial deliverability and efficacy.

Step 5 – Evaluation and clarification of bidders' proposals

- Evaluation and clarification process of the submitted proposals
- Negotiations leading to appointment of preferred bidder
- Focus and achieve satisfactory arrangements on:
 - Exactly what the potential partner will provide
 - The financial model that supports this solution and the price relating thereto
 - Key pricing/commercial issues

- Risk and reward arrangements between the Council and potential partner
- Partnering agreement.

Step 6 – Ensuring Council and the potential partner are clear about:

- who identifies opportunities
- who pays for the development of opportunities identified
- who takes ownership of the delivery of opportunities sought
- who manages the marketing of trading opportunities
- how are the rewards shared between the Council and the potential partner (determine percentage shareholders agreement)
- exclusivity arrangements.

Step 7 – Negotiation to contractual close.

CHAPTER 4

Legal Models for Shared Services Delivery Models

- 4.1 Structures are always a means to an end, rather than ends in themselves. Local authorities have been provided with a plethora of structures to the extent that some authorities struggle to fully understand the options that they have. Moreover, more choices emerge as local government is given more flexibility to design suitable arrangements for service delivery and as central Government develops new entities for service delivery, for example community interest companies.
- 4.2 This guide highlights some of the principal approaches and provides case studies or reference sites to support that analysis.

UNDERSTANDING THE ALTERNATIVES

- 4.3 There are many different legal arrangements for working that can support shared services.
- 4.4 The choice of option will depend on the precise circumstances of the situation and the authority's performance.

Organisational Involvement	Public sector	Not-for-Profit	Private Sector
In-House	✓	-	-
Public sector consortium	✓	-	-
Joint venture	✓	✓	✓
Partnering contract	✓	✓	✓
Outsourcing	-	✓	✓
Concession	-	-	✓

ILLUSTRATIONS

Structure	Description
In-house	<p>The local authority provides the services directly.</p> <p>Shared service provision can take place with other public sector bodies using the 1970 Act powers, it could form a company and trade with all comers, or it could form a composite arrangement consisting of a LLP and a company.</p>
Public sector consortium	<p>Consortia – where two or more local authorities agree to pool resources and expertise, and share (some) functions.</p> <p>Again, this can cover one function/service, a set, or the full range of functions and services. Arrangements can be entered into with other public sector bodies using the 1970 Act powers, it could form a company and trade with all comers, or it could form a composite arrangement consisting of a LLP and a company.</p>
Joint Venture Part 1: Companies	<p>Shared service arrangements can be suitable in a joint venture structure whether this is part of a larger strategic partnership or if the arrangements are more specific on identified opportunities. The joint venture could be with a private sector company, a charity/voluntary body/ social enterprise sectors.</p>
Joint Venture Part 2: Limited liability partnership	<p>Shared service delivery through a LLP can be suitable for dealing with other public bodies (but only if the legal arrangements for a partnership i.e. being formal for profit can be satisfied). This structure cannot be used for trading and is being carried out under the powers contained in section 95 of the 2003 Act.</p> <p>LLPs are favoured by some politicians and have a number of distinct fiscal advantages. A LLP can be a partnership between the authority and a private sector company or it could be with a charity/voluntary body/ social enterprise sectors.</p>
Joint Venture Part 3: Not-for-Profit	<p>Where a local authority or a group of local authorities provide all or some services as Trust and constituted either as a company limited by guarantee, a charity or an Industrial and Provident Society.</p>
Partnering contract	<p>Where the local authority enters into an agreement with one or more private sector organisations to pool (some) resources and expertise, and share responsibility and decision-making to achieve common objectives.</p> <p>Strategic partnerships can be vertical (confined to a service or group of services) and/or horizontal (strategic management, operational management or the delivery of a range of services). The benefits of shared service delivery can be achieved either through a gain-sharing agreement or with a project-by-project profit share.</p>
Outsourcing	<p>Again, shared services can fit with outsourcing. Outsourcing is delivered within a contractual framework by a private sector provider.</p> <p>The local authority determines the specifications and retains only a contract management/client role for the services outsourced.</p>

INTRODUCTION TO THE STRUCTURES

4.5 So what are the legal alternative structures?

Category	Description	Principal structures that may be appropriate
A	Centralisation and standardisation within a single local authority e.g. shared personnel and HR activities	In-house Contractual arrangement (possibly, in the form of a strategic service delivery partnership).
B	Collaboration between authorities on strategic approaches	LSP and LAAs Could use informal arrangements, company structure for governance, or contractual arrangement, joint committee, LLPs
C	Collaboration between bodies for: <ul style="list-style-type: none"> • The better delivery of services e.g. sharing of expertise or cost reduction. • Improved procurement including joint commissioning 	Unless private sector involved: <ul style="list-style-type: none"> • Contracts with or without a partnership board • Joint committee • A company limited by shares/guarantee • LLP
D	Franchise approaches: <ul style="list-style-type: none"> • Local authorities providing direct support to another • One local authority providing methodologies to others 	Where more than one authority franchises are involved: <ul style="list-style-type: none"> • Contracts with or without a partnership board • Joint committee • A company limited by shares/guarantee • LLP
E	Joint service delivery between local authorities	Unless private sector involved: <ul style="list-style-type: none"> • Contracts with or without a partnership board • Joint committee • A company limited by shares/guarantee • LLP
F	Joint service delivery between different types of public body	Unless private sector involved: <ul style="list-style-type: none"> • Contracts with or without a partnership board • Joint committee • A company limited by shares • LLP

Category	Description	Principal structures that may be appropriate
G	Commercial trading for the profitable exploitation of assets, skills or location to provide new income for the benefit of the initiating authority or authorities	Company limited by shares
H	Commercial trading in partnership with a private sector partner	Company limited by shares

- 4.6 The following overview tables provide legal, financial and commercial comments on each approach.
- 4.7 The principal structures for shared services may be conveniently grouped under the seven main headings – public sector consortium, joint ventures, limited liability partnerships, partnering contracts, outsourcing and in-house, concessions/franchise.
- 4.8 There are concise overviews, based on each of those seven groups – a form of simplified overview of the structures that are likely to be used or contemplated in developing a shared service proposal. The structures are capable of extensive refinement and adaptation to meet the wishes of the pertinent stakeholders for a given project.
- 4.9 Each of the overviews follows a standard format:

<i>Description and overview</i>	This provides descriptions and highlights important matters pertinent to the structures being considered.
<i>Advantages</i>	Positive aspects of the structure are given.
<i>Disadvantages</i>	Negative aspects of the structure are given.
<i>Legal</i>	Highlights of the key legal issues that each structure gives rise to and an indication of the legal documentation needed.
<i>Administration and governance</i>	Each structure gives rise to different administrative and governance issues and the tables set out some of the important matters that need to be borne in mind.
<i>Finance and Taxation</i>	A summary of issues such as risk and reward mechanisms in relation to each of the structures. Where appropriate we have commented on the taxation implications.
<i>Employees</i>	Employees are a key resource in most local authority shared service models. The structures have different implications for employees and the tables provide an indication of those issues.
<i>Suitability</i>	Indications of when the structure might be suitable and when not have been provided.

Table 1: In-house and Franchising

Description and Overview

The local authority provides the services directly. Shared service provision or arrangements to facilitate the improvement of services, such as franchising, can take place with other public sector bodies using the 1970 Act powers. There may be a contract between the local authority providing the services and the public sector body receiving the services. Where the collaborating public sector bodies are local authorities then the model may involve a delegation of functions to the provider local authority. The local authority provider may form a company and trade with all comers (both public sector bodies and private sector entities). Where the trading is undertaken with another public sector body then where, as is likely, that other public sector body is a contracting authority under the EU procurement rules, then the local authority providing the services can only do so following a compliant tender process.

As has been explained previously franchising is a type of in-house provision. It follows the business format franchising model. The business format franchising model involves the granting of a licence by one person (the franchisor) to another (the franchisee) which entitles the franchisee to trade under the trademark/trade name of the franchisor and to make use of an entire package, comprising all of the elements necessary to establish a previously untrained person in the business and to run it with continued assistance on a pre-determined basis.

Each business outlet is owned and operated by the franchisee. However, the franchisor retains control over the way in which products and services are marketed and sold, and controls the quality and standards of the business.

In local government, the same concepts will apply. Local authorities have aspects of their service package that are capable of being packaged into a franchise operation that can then be sold to other public service bodies. They also have skilled officers that can be made available to other local authorities. The legal powers for this can be initially found in the 1970 Act. However, as franchising grows, it may cease to be collaboration and if developed for commercial gain it will become a trading activity and trading powers will become relevant.

Figure1: In-House Structure

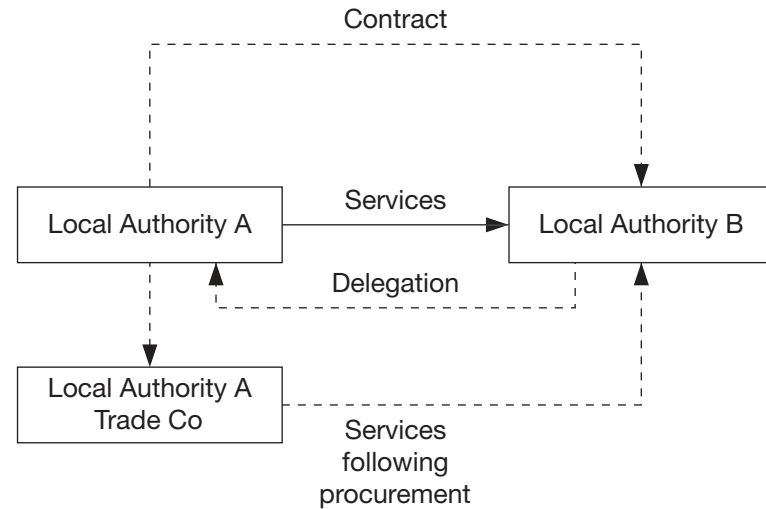


Table 1: In-house and Franchising (continued)

An example will be where an excellent local authority (ies) creates its own delivery agent with the aim of extending its ambit to the other excellent local authorities. The delivery agent holds the “intellectual property” of the excellent local authority (ies). Using business format franchising, the delivery agent grants a licence to the excellent local authority (the franchisee) which entitles the franchisee to distribute the best practice products under the delivery agent’s name.

Local authorities who are under-performing can elect to work with a chosen high-performing local authority from the delivery agent. The delivery agent will take care of the administrative, financial, programme management, product development, training and national learning responsibilities. This is intended to release the provider and client local authorities to concentrate on delivery and increases efficiency every time the franchising arrangement is used.

Payment will be made by the local authority receiving the benefit by reference to the cost of services and the achievement of outcomes. Franchisors will need to consider the potential for the application of the EU procurement rules and to an extent this will depend upon whether the excellent local authority is acting as an economic operator or whether any delegations of functions are involved.

Figure 2: Franchising Structure

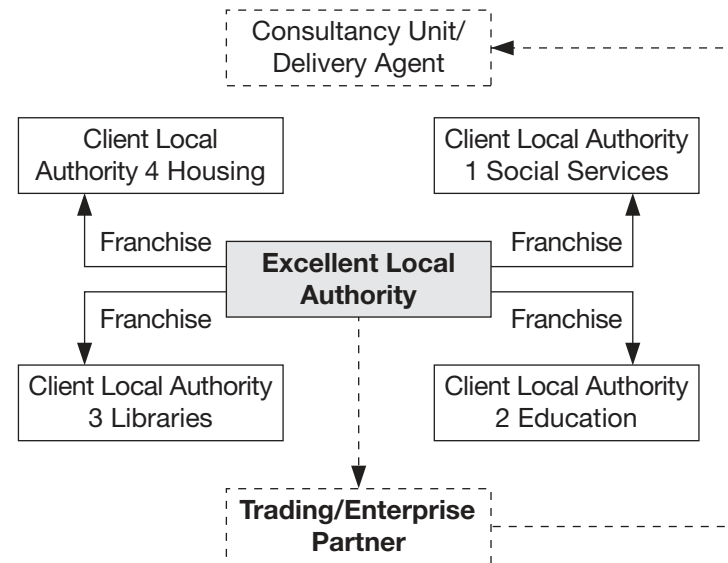


Table 1: In-house and Franchising (continued)

<p>Advantages</p> <ul style="list-style-type: none"> • Relatively straightforward concept if only two local or public authorities are involved; • Can be simple contract or scheme if delegation; • Service provision is kept within the public sector family; • Means of disseminating best practice; • May achieve economies of scale (if that is objective); • Should achieve service improvement by reference to outcomes (if that is the objective). 	<p>Disadvantages</p> <ul style="list-style-type: none"> • May involve the application of the EU procurement rules where there is a public contract and the local authority providing the services is acting as an economic operator (particularly the case where trading occurs); • Inconsistent statutory provisions between different public authorities may apply e.g. powers and VAT which may drive the structure; • No risk transfer from public sector; • Set up costs in establishing service provision or franchise; • May raise issues of capacity and resources in authority providing the services; • Need for member buy in for cross-border activity; • May be less potential for radical change and entrepreneurial thinking if process restricted to existing public sector conventions.
<p>Legal Issues</p> <ul style="list-style-type: none"> • Powers – wide powers available under the 1970 Act, Section 111 Local Government Act 1972, Section 101 Local Government Act 1972, Section 19 Local Government Act 2000, Section 2 Local Government Act 2000 and, for trading, section 95 Local Government Act 2003; • Consideration as to whether the EU procurement rules apply to any contract between the local authorities. This in turn will depend upon whether there is a public contract. A public contract will only exist where the local authority behaves as an economic operator. The local authority is likely to behave as an economic operator where a trading activity is undertaken. Even if the services are part B (or Part 2) services case law suggests a proportionate competition may be required to comply with EC Treaty obligations in relation to transparency and non-discrimination; • Any trading company will be a regulated company for the purposes of Part 5 Local Government and Housing Act 1989 (although now only relevant for the purposes of propriety rules); • Need for contract or scheme of delegation. 	<p>Administrative and Governance Issues</p> <ul style="list-style-type: none"> • Duration and scope of the arrangements; • How are arrangements to be managed – who is to determine; • Policy/member responsibilities/accountability; • To what extent will there be a delegation of decision making; • How will scrutiny arrangements be incorporated; • How will employees working on the project be managed.

Table 1: In-house and Franchising <i>(continued)</i>	
<p>Finance and Taxation Issues</p> <ul style="list-style-type: none"> • Need for clarity for budget-setting arrangements; • Payment mechanisms may need to be considered – will payment be dependent upon outcomes; • How will the establishment of service provision or franchise be funded – need for working capital; • Service provision between local authorities is straight forward, VAT will be chargeable on any services provided; • Any trading company profit will incur a charge to corporation tax; • Any trading company will require working capital. 	<p>Employees</p> <p>Generally retained by the provider local authority although may be some secondment.</p>
<p>Suitability</p> <ul style="list-style-type: none"> • Will be an appropriate structure for any of categories B-D of collaboration and shared services; • There is a monopoly of a service by public sector providers; • Particularly suitable for service improvement and capacity building; • Delivery is retained in the public sector family. 	

Table 2: Public Sector Consortium¹⁷

Description and Overview

In this model, the local authority and one or more other local or public authorities join together to effect joined-up service delivery of some or all of their activities. The public authorities may be district councils, metropolitan borough councils, unitary councils, county councils and/or different government sectors (e.g. a local authority and a NHS trust). The arrangements may involve the pooling of budgets (where there is express statutory authority to do so) or the application of separate budgets.

Where a formal collaboration structure is needed the local authorities will need to determine the nature of the structure which will best suit the needs of the arrangement. Five options are suggested below:

- contractual arrangement (with or without a Partnership Board) with no corporate status but defined in contractual arrangements between the parties;
- a Joint Committee established under the terms of the Local Government Act 1972 or any other legislation (e.g. Section 31 Health Act 1999 and the NHS Bodies and Local Authorities Partnerships Arrangements Regulations 2000);
- a non-profit distribution entity (probably a company limited by guarantee or an industrial and provident society);
- a profit distribution entity (probably a company limited by shares or a Limited Liability Partnership);
- simultaneous executive meetings.

Figure 3: Separate Budget and Joint Commissioning or Delivery

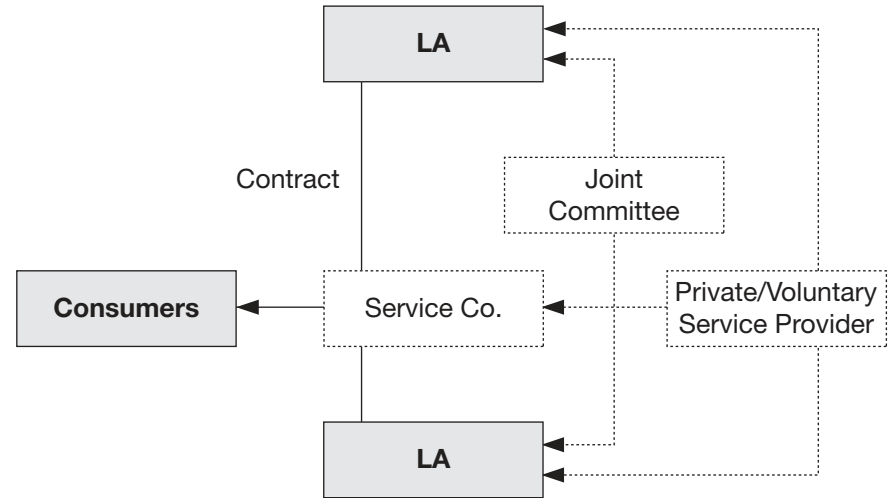
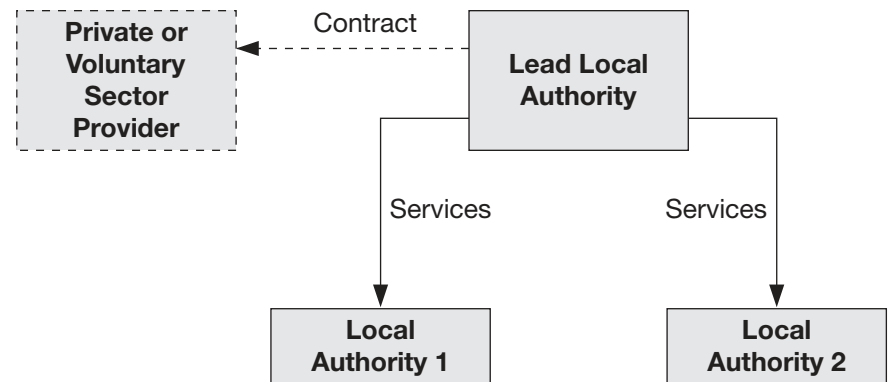


Figure 3A: Lead Authority Model



¹⁷ See Chapter 2 of *Structures for Service Delivery Partnerships – Technical Notes* (ODPM 2002 updated by DCLG in 2006)

Table 2: Public Sector Consortium (continued)

Figure 3 illustrates a structure where separate budgets and the sharing of other resources (e.g. employees) are envisaged. The collaboration between the local authorities may be by contract, joint committee or through a company (Service Co) or indeed a mix of those. For example, the local authorities may decide to work together through a company, whilst at the same time form a joint committee to work alongside the company and to whom decisions may be delegated. **Figure 3A** illustrates a local authority model where one local authority provides services to others with the possibility of the local authority contracting with third parties on behalf of those authorities (with the local authority being suitably indemnified). **Figure 4** illustrates a structure involving the pooling of budgets. The pooling of budgets is permissible between local authorities and NHS Bodies in relation to certain defined functions but it is doubtful whether pooling of funds between local authorities is lawful as one local authority may technically be funding a deficit in another (any similar arrangements between local authorities would need to involve the delegation of functions).

It is likely that the delivery of services would be by the entities themselves. **Figure 4** shows the potential of delivery through a company although this will require formation or delegation by the Secretary of State under Section 4 of the Health and Social Care Act 2001 where the delivery of goods, services or facilities are the object. In each case, where an NHS Body is involved, the collaboration arrangements must comply with the requirements of the Health Act 1999 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended by NHS Bodies and Local Authorities Partnership Arrangements (Amendment) (England) Regulations 2003). Both examples illustrate the possible involvement of private or voluntary sector service providers.

The services may be delivered solely by the local or public authorities, or may involve the private or voluntary sectors in the delivery of services. This can be either through a direct contractual relationship (including joint participation in a corporate entity) or an indirect contractual relationship through a corporate entity established by the public authorities.

Unless a private or voluntary sector service provider is involved, the risk associated with the service provision and trading will remain with the public sector.

Figure 4: Pooled Budget and Joint Commissioning

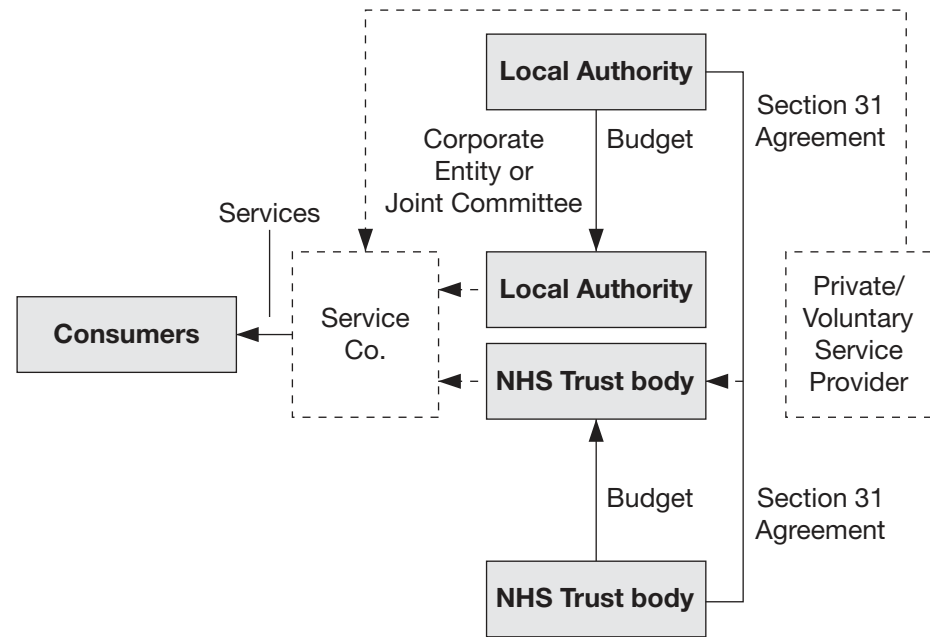


Table 2: Public Sector Consortium (continued)

<p>Advantages</p> <ul style="list-style-type: none"> • Relatively straightforward concept if only two local or other public authorities are involved; • Should achieve economies of scale; • Avoiding duplication and/or competition between activities; • Added value in pooling know-how, expertise and experience; • Specialisation and centres of excellence; • One-stop “seamless” service delivery involving more than one activity and public service provider; • “Best of both worlds” potential for involvement of both public and private sector. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Inconsistent statutory provisions applying to different types of public authorities, e.g. powers and VAT may drive arrangements rather than support structures; • Consequences of any disagreements, “fall out” or deadlock between the authorities; • Any capital resources limited to those within local authority affordability limits without a private or voluntary sector partner; • No risk transfer from the public sector unless authorities appoint a private or voluntary sector partner; • Less potential for radical change and entrepreneurial thinking if process restricted to existing public sector conventions; • A risk that they will be seen as an end in themselves rather than a means to an end; • A risk that they will be supported/underpinned by layers of bureaucracy within parent authorities.
<p>Legal Issues</p> <ul style="list-style-type: none"> • Powers, however, increasingly wide discretion is allowed; • Need to decide whether a delivery vehicle is needed. May be an unincorporated body (e.g. a joint committee/board/partnership board or a corporate body (a company limited by guarantee, industrial and provident society or limited liability partnership); • Where procurement of services involved, need for co-ordination of policy and supervision of the contract – need to consider managing this process through a corporate entity – a non-profit distributing organisation may be appropriate; • Likely to be outside EU procurement rules provided none of the authorities behave as an economic operator; • Any company formed may be regulated under local government law and reviews of the status will be needed. NHS bodies have restricted powers to participate in companies/corporate bodies; • Any trading using the trading powers must be through a company and the EU procurement rules are likely to apply where trading is with a public bodies. 	<p>Administrative and Governance Issues</p> <ul style="list-style-type: none"> • How are the arrangements going to be managed – who is to be in charge and determine policy/member responsibilities/accountability; • Duration and scope of the arrangements; • Agreeing performance objectives and how differing objectives between organisations are to be dealt with, determining the boundaries of the consortium and how additional parties may be involved; • The authorities may also contemplate procuring a private or voluntary sector service provider. The consortium agreement will also need to set out how this procurement is to be achieved and also define the relationships; • Need to assimilate different objectives and requirements of each of the local or public authorities; • Similarly, co-ordination of procedures and systems of each of the local or public authorities (particularly IT systems).

Table 2: Public Sector Consortium (continued)

Table 2: Public Sector Consortium (continued)	
<p>Finance and Taxation Issues</p> <ul style="list-style-type: none"> • Need for clarity of budget-setting arrangements; • Payment mechanisms may need to be considered, alternatively cost-sharing mechanisms agreed; • Sharing of commercial benefits and sharing overspends; • Need to address how future capital requirements are to be dealt with; • Evaluation of seamless service using full pooling of resources compared to joined-up procurement; • Auditing and accounting – responsibilities and access; • Tax treatment within local government consortium likely to be straight forward, although VAT will be payable on services – where NHS bodies/private sector/voluntary sector involved will require careful analysis if fiscal disadvantages not to arise. 	<p>Employee Issues</p> <ul style="list-style-type: none"> • May be a TUPE transfer if a separate entity is established but secondments or ongoing approaches could be used; • The ODPM Code of Practice (2003) on Workforce Matters will apply to any transfer of employees; • Communication and consultation on transfer of employees; • Where different terms and conditions apply to staff coming to the consortium, a need to determine whether to standardise or leave as they are; • Membership of existing pension schemes to continue (NHS/local authority arrangements will require special consideration); • Where different public sector pensions schemes are used, need to determine which scheme will apply to new recruits.
<p>Suitability</p> <ul style="list-style-type: none"> • Public sector consortium is appropriate where in relation to categories B, C, E and F except where a private sector partner is involved; • It may also be appropriate for Category D where one or more local authority franchises are involved. In particular it is suitable where: <ul style="list-style-type: none"> • There is no monopoly of a service by public sector providers’; • The risk of trading/joint service provision is low and no intention to deliver services outside the public service family; • There is no need for private sector finance; • No immediate need for private/voluntary sector skills; • Significant fiscal benefits of a joined-up approach; • Significant organisational advantages and economies of scale; • It can be used as a stepping stone to other forms of trading/service delivery. 	

Options for Public/Public Collaboration

Joint Committee		
<p>Features</p> <ul style="list-style-type: none"> • A formal local authority committee constructed under Section 101 of the Local Government Act 1972; • Policy determined by local authority councillors for the purpose determined/delegated by the principal authorities; • Managed by designated officers. 	<p>Advantages</p> <ul style="list-style-type: none"> • Established arrangements; • Legal promoters well-known and understood; • Open democratic accountability (member involvement is brought into the heart of the entity); • Local authority members/officers do not take on additional responsibilities; • Procedures prescribed in local government law; • Can be delegated functions. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Can be bureaucratic; • May not be focused solely on managing the contract; • May not promote “difference” in approach; • External organisations cannot vote; • Powers for non-local authorities to take part not available? • No corporate entity to be able to contract or own property in own name.
Non-Profit Distributing Organisation e.g. Company Limited by Guarantees, Industrial and Provident Society		
<p>Features</p> <ul style="list-style-type: none"> • A separate entity from participating local authorities – can be established under various Acts. • Composition and purpose set out in a memorandum and articles of association or similar. 	<p>Advantages</p> <ul style="list-style-type: none"> • Distinct legal status; • Tailored solution; • Permanence; • Capable of being used for multi-purposes; • Private sector accountability/auditability; • Retained earnings used for agreed objectives; • Can contract and own property; • Can be structured through sufficient risk transfer to achieve off-balance sheet treatment for new capital finance; • A company limited by guarantee can be used to give different “stakeholder weighted interests”; • Can grant a floating charge over assets by way of security. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Need to consider vires issues; • Potential exposure to taxation; • Conflict of interest issues need to be monitored; • Independently monitored; • Regulated by Companies Acts/Industrial and Provident Societies Acts and Insolvency Acts; • Cannot raise finance through “issues” (by itself) – only debt.

Options for Public/Public Collaboration (continued)		
For Profit Entity e.g. Company Limited by Shares		
<p>Features</p> <ul style="list-style-type: none"> • As for not-for-profit but dividends payable; • The normal preferred structure if profits are a key motivator and/or private sector involved. 	<p>Advantages</p> <ul style="list-style-type: none"> • Familiar to the private sector; • Distinct legal status; • Tailored solution; • Permanence; • Capable of being used for multi-purposes; • Private sector accountability/auditability; • Recognisable vehicle for raising finance (albeit for types of finance other than debt); • Shares easily recognisable interest and transferable. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Need to consider vires issues; • Potential exposure to taxation; • Conflict of interest issues need to be monitored; • Independently monitored; • Cannot be used as a charitable entity (but a Community Interest Company may give community protection).
Limited Liability Partnerships		
<p>Features</p> <ul style="list-style-type: none"> • A corporate entity in its own right; • No maximum number of members to a LLP; • Limited liability; • Not a permitted entity for trading vehicles (under section 95 of the Local Government Act 2003 trading must be through a company). However, can be included in a trading structure for beneficial tax reasons (see Table 5 below). 	<p>Advantages</p> <ul style="list-style-type: none"> • Transparent for tax purposes, members being taxed on their share of income/gains from the partnership hence reflecting the authority's tax position; • Limited liability for the partners; • Familiar to the private sector; • Distinct legal status; • Private sector accountability and auditability; • Can contract and own property; • Liability of members restricted to their contribution. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Need to consider vires issues; • Protection may be limited if negligence occurs; • Cannot be used for S95 trading but can form part of the structure for fiscal advantage; • Similar reporting arrangements to private sector companies; • Little practical experience to date (2006) in local government; • Same member/officer conflict of interest issues as with companies; • Cannot be used for non-profit making activities.

Options for Public/Public Collaboration (continued)		
Simultaneous Executive Meeting		
<p>Features</p> <ul style="list-style-type: none"> • Executives of each local authority meet in a single place; • In law separate meetings takes place; • There is a distinction between chairing of the debate and chairing of separate meetings; • The local authorities have different constituents and make individual authority votes; • The local authorities retain their individual overview and scrutiny roles. 	<p>Advantages</p> <ul style="list-style-type: none"> • Can be modified, expanded and created quickly; • The SEM requires no new organisation and existing rules of law, governance and behaviour apply; • The decisions are taken are the highest level and strategic cohesion is supported; • Encourages expansion of joint working beyond the original concept of the scheme; • It ensures that the key policy makers are involved in decision making and requires no delegation of powers from one or other authorities. • Unlike a company type structure there is no need to become familiar with new responsibilities and behaviours. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Lacks permanence and capable of being terminated rapidly; • The SEM approach may not be suitable where the number of authorities working together is more than two or three; • Requires members to travel to other authorities in order to take decisions; • Does not facilitate joint working beyond local government e.g. NHS; • In order to justify an SEM approach the partnership needs to be of major strategic importance for all authorities and this suggests that it works best for authorities of similar standing i.e. district councils.

Table 3: Joint Ventures and Trading¹⁸**Description and Overview**

This model involves a local authority entering into a joint venture with a private or voluntary sector partner to facilitate the provision of trading or delivery of services. This model might include joint ventures between local authorities and/or other public sector bodies.

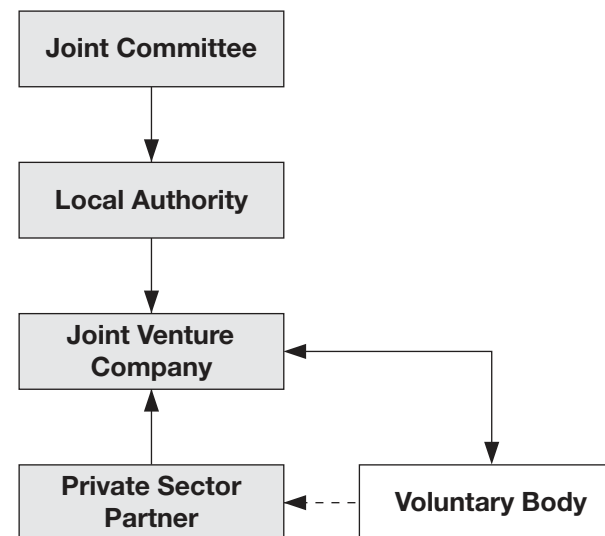
If a joint venture is intended to be profit-making for its participants or, if significant private-sector funding is involved, then a company limited by shares is likely to be the preferred structure. This is because such a company can pay dividends to its members. Its structure and operation are well understood by private sector participants.

Companies limited by shares have a simple structure to readily enable a change in participants, since a withdrawing or retiring participant(s) simply transfers its shares to the remaining participant(s) or new participant(s).

Alternative structures – company limited by guarantee/an industrial and provident society – are the preferred vehicles for a joint venture that is set up more as a collaborative non-profit making venture.

Trading through the provision of shared services using the trading powers in the Local Government Act 2003 must be through a company.

Figure 5: Joing Venture Company (Provision of Services)



¹⁸ See Chapter 3 of *Structures for Service Delivery Partnerships – Technical Notes* – (ODPM 2002 updated by DCLG in 2006)

Table 3: Joint Ventures and Trading (continued)

Figure 6: Multi Local Authority Joint Venture

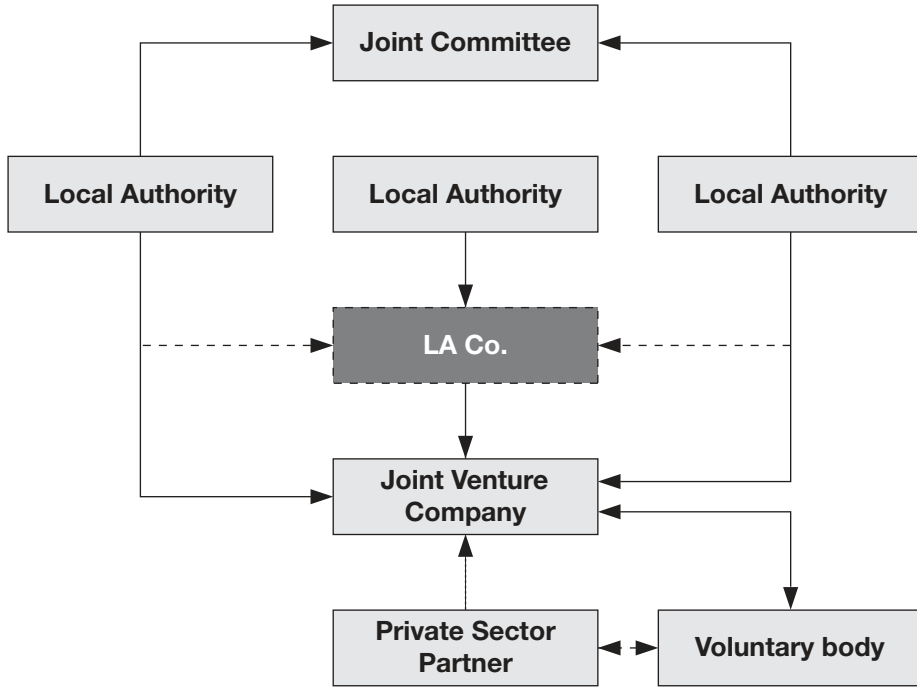


Figure 7: Trading Company and Shared Services

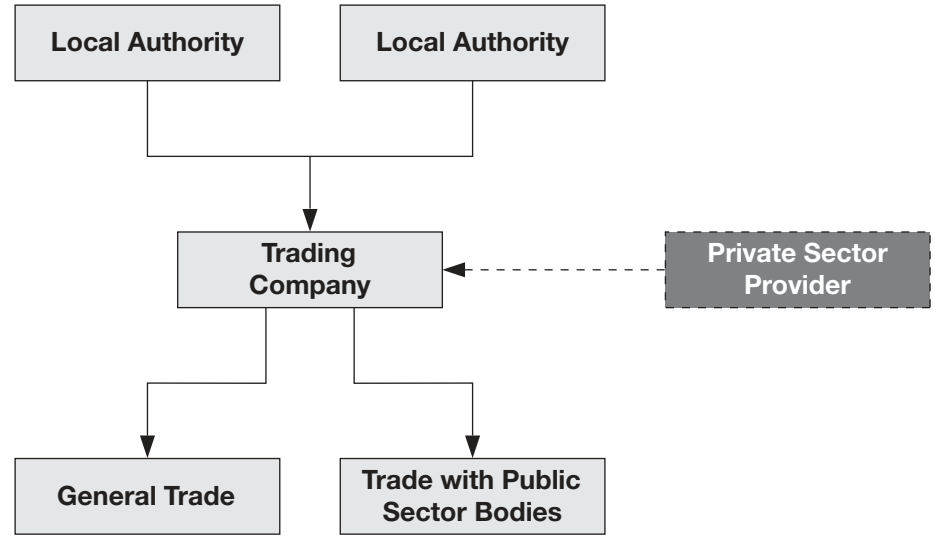


Table 3: Joint Ventures and Trading (continued)

Advantages

- A company has its own legal capacity, separate from its founder shareholders; consequently, JV Co can own and deal in assets, employ people, enter into contracts in its own right, and will be subject to private sector accounting and tax considerations;
- Using a company structure can improve access to the skills and other resources of the private sector partner(s), such as commercial acumen, finance and technology;
- The company structure provides a mechanism for capturing longer-term value, as the local authority will hold an equity stake in the company;
- Joint venture companies provide flexibility in respect of both management and returns;
- Staff can be given a greater incentive to succeed through the prospects of higher salaries and rewards such as bonuses or share options (ESOPs);
- A skilled independent management team can be put in place in the new company;
- A company structure encourages greater focus on the business plan and achieving goals;
- A joint venture company can allow better management of risks and can be used to limit liabilities to the local authority;
- Where necessary, it is still possible for local authority policy objectives to be preserved by securing the desired level of control in the decision-making of JV Co as a shareholder or on the board, or by including provisions in the legal documents;
- JV Co may raise additional finance without impinging upon the local authority's finances.

Disadvantages

- For the local authority, potentially an obscuring of public accountability and weaker audit requirements;
- The risk of directors' liabilities arising from directors' fiduciary duties generally and those that may arise from the insolvency legislation;
- The risk of the insolvency of JV Co, loss of equity stake and discontinuity of service;
- The time and costs involved in establishing and operating the company;
- JV Co may not necessarily be attractive to participating local authorities and the private sector due to a perceived lack of control over its "own destiny";
- The difficulties in matching cultures in one vehicle;
- "Conflicts of Interest" which can arise between the duties owed by members and/or officers to the local authority and to JV Co.

Table 3: Joint Ventures and Trading *(continued)*

Legal Issues

- The rules relating to local authority participation in companies under the Local Government and Housing Act 1989 are relevant but may have little practical effect as a consequence of prudential controls;
- The Local Government Act 2003 requires local authority trading carried out under section 95 to be performed through a company. The use of section 95 powers is restricted to those authorities that achieve a CPA rating of excellent, good or fair. The 2003 Act specifies a company and that can be either a company limited by shares, guarantee, IPS or in theory an unlimited company;
- Decision on whether the local authority will be a minority, majority or equal shareholder should be taken after careful consideration of all the pros and cons;
- The local authority when planning the formation of a joint venture, should first consider whether it has the necessary powers including that:
 - it has legal powers to set up the company.
 - it is not using its powers for an improper purpose or unlawfully delegating its powers.
 - it has the power necessary to cover the business activities of JV Co.
 - any expenditure and other expenses in relation to JV Co have been properly authorised in accordance with legislation and the local authority’s own internal rules and regulations.
 - it is acting in a way that is compatible with the Human Rights Act.

Powers to establish companies for joint venture companies can be found in the well-being provisions of the 2000 Act. The EU procurement rules are likely to apply.

Administrative and Governance Issues

- The local authorities and any private sector partner will own the shares of JV Co when it is established. These parties will become the JV Co shareholders. The shares may be held in any proportion but are generally held in proportion to each shareholder’s investment. Each party will subscribe for shares; the number of shares will in turn usually determine the number of directors each shareholder may appoint to be on the board of directors;
- JV Co will have a board of directors who will have legal responsibility for managing JV Co. Some matters will be reserved to the shareholders by statute or identified in JV Co’s constitution as being reserved for decision by the shareholders. Although the larger shareholder will have the majority of votes at meetings of shareholders and directors, a shareholder with a minority interest can invoke various statutory and constitutional protections;
- If a local authority takes a minority share interest it will need to ensure that this gives it the level of involvement it needs;
- Each party will enter into an agreement with JV Co (and probably also the other shareholders) in relation to the provision of those assets and skills and also to the rights, obligations and liabilities of each party in that respect;
- Where JV Co is providing services to a local authority, there will be a services contract between the local authority and JV Co, setting out the terms upon which the services are provided and a payment and performance mechanism relating payment to the standard of the services to be provided;
- The parties to the joint venture will agree its objectives that in turn will govern and/or limit the activities of the JV Co. JV Co may in itself be the end vehicle for discharging the objective of the joint ventures;
- Reputation and public policy concerns: controls may be needed to protect the local authority’s reputation and ensure that JV Co does not act counter to public policy concerns.

Table 3: Joint Ventures and Trading (continued)

Financial and Tax Issues

- Viability and business case: can the business prosper? Are its aspirations realistic and sensible? How are future developments and fund raising to be dealt with?
- A comprehensive business plan needs to be written with input from all parties;
- Financing: how is the joint venture company to be financed? Mainly by external bank borrowing or by the participants themselves and what security is available in the joint venture?
- Accounting and tax treatment: how a local authority's participation in the joint venture will be treated for accounting purposes will be a crucial factor in determining the appropriate structure for a joint venture;
- Limitation of liability: what limitations are to be placed on the liability of participants for the debts and obligations of the joint venture? (A joint venture company will enable liabilities of the shareholders to be "ring-fenced" in the company.);
- Shares in JV Co are given in return for the assets and resources each partner contributes. Financial investment in JV Co will normally be provided by the private sector. The local authority needs to ensure that its equity properly reflects the value of the property, equipment, skills/expertise, etc which it contributes;
- Protection of investment: the local authority needs to consider how it will realise returns on its investment in JV Co;
- The shareholders will need to decide policy for how any available profits of JV Co are to be distributed.

Minority protections – as a minority shareholder the local authority may need to give consideration to shareholder consent matters (matters which each shareholder needs to consent to).

Employee Issues

- There may be a TUPE transfer if the joint venture entity takes over the services of a local authority but secondment or agency approaches could be used;
- Code of Practice (2003) on Workforce Matters for the existing workforce and terms and conditions of new recruits;
- The DCLG communication and consultation process will apply where any transfer of employees is involved;
- May be a need to consider secondments for all or part of the employees;
- Where different terms and conditions apply to staff coming to the joint venture entity there is a need to determine whether to standardise or leave as is;
- Membership of existing pension schemes can continue if admitted body arrangements are put in place;
- Where different public sector pension schemes are used there is a need to determine which scheme will apply to new recruits and the financial consequences of requiring membership of the local government pension scheme.

Table 3: Joint Ventures and Trading *(continued)***Suitability**

- Joint venture company structures are appropriate for categories C, E and F (where there is a private sector partner) and G and H and in particular for trading and service delivery where one or more of the following attributes are prominent:
 - There is a need for a separate identity and continuing public sector participation in managing the strategic direction of service delivery.
 - There is potential for significant growth in the value of the enterprise and contractual gain sharing arrangements are not seen as sufficient.
 - To provide a new start for an activity / fresh management for a service that needs to improve but where the private/voluntary sectors for that service or in a geographic area are not established.
 - The partnering organisation is comparatively inexperienced in the service being delivered but has an excellent track record for other services.
 - The best financial deal can be achieved by this approach.
- Local authorities should consider the results of their market soundings before determining this is the route to be explored. Private sector companies do not always wish to get involved in joint venture companies, preferring partnering contracts or outsourcing.

Table 4: Joint Ventures – Non-Profit Distributing Organisations (“NPDO”)¹⁹**Description and Overview**

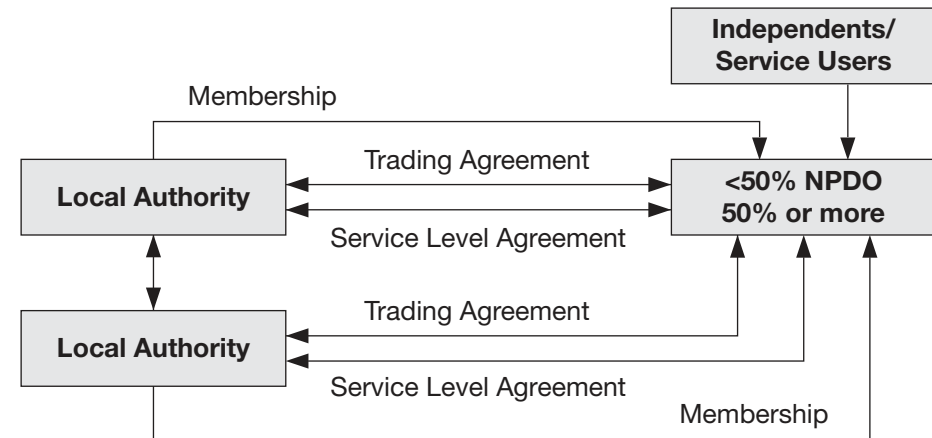
Not-for-profit entities are prominent in those areas of the economy reliant on state or local government subsidy. They are also commonly used in two other contexts: regeneration and economic development programmes, in particular, as vehicles for delivery of projects at a local level housing in particular, housing associations, community associations and local housing companies.

Not-for-profit entities are used as trading vehicles for social enterprises, universities and public/public consortium. They are being used to facilitate the involvement of the community and for the delivery of core services in a limited number of situations.

Advantages

- The principal drivers for this option compared to other joint venture forms are:
 - can involve stakeholders in decision-making with representatives of users/community on NPDO board;
 - avoids the sensitivity of profit being earned/distributable profits from core services;
 - can have significant revenue savings from business rate relief;
 - potential VAT revenue benefits;
 - corporation tax exemption if charitable;
 - significant local authority influence through grant conditions and board representation.

The advantages of NPDOs may be realised as part of an umbrella structure, encompassing multi-services of the local authority, rather than a free-standing delivery vehicle. A charitable arm may be incorporated to enable the organisation to draw upon the advantages and the element of control afforded by the Charity Commission. NPDOs can be used within hybrid group structures involving joint ventures with the private sector.

Figure 8: Joint Venture Using NPDO**Disadvantages**

- The principal disadvantages of this option are:
 - the local authority often has to find capital resources/guarantees;
 - risk of cost overruns and delay tends to remain with public sector;
 - a lack of management incentive and therefore a risk of inefficient or ineffective management;
 - discontinuity of service risk in event of failure or re-transfer to the local authority;
 - additional management and support service costs;
 - difficulty finding willing and able board members;
- Charity Commissioners have tightened criteria for charitable status and this may restrict a local authority's involvement with the management.

¹⁹ See Part 2 of Chapter 3 of *Structures for Service Delivery Partnerships – Technical Notes* (ODPM 2002 updated by DCLG in 2006)

Table 4: Joint Ventures – Non-Profit Distributing Organisations (“NPDO”) (continued)

<p>Legal Issues</p> <ul style="list-style-type: none"> • Principally the same as for other forms of joint venture; • Land can be transferred to non-profit distributing bodies at less than current values in some circumstances. 	<p>Administrative and Governance</p> <ul style="list-style-type: none"> • NPDO structures will not typically be companies limited by shares but companies limited by guarantee or industrial and provident societies, both of which might be charitable. • Characteristics of a Company Limited by Guarantee: <ul style="list-style-type: none"> – A company, whether limited by shares or guarantee, is governed by its memorandum and articles of association. These set out the objects and powers of the company, the rules for holding general meetings of the members and board meetings of the directors, the rules for the introduction of new members, the rules for the appointment or election of directors, and the rules of company governance. – The members of a company have limited liability. In a company limited by guarantee (the normal vehicle for a charitable company), the member’s liability is limited to the extent of his guarantee. When he becomes a member, he signs a guarantee form (usually included in the membership application form), in which he agrees to pay £1 (typically) towards the debts of the company in the event of insolvency. • Characteristics of an Industrial and Provident Society: <ul style="list-style-type: none"> – An IPS is governed by its rules and registered with the Registrar of Friendly Societies. The principal legislative provisions are set out in the Industrial and Provident Societies Act 1965. – An IPS is a corporate body. The liability of members as shareholders is limited to the extent of their share. An IPS is governed by its committee, which is the equivalent to the board of directors of a company. As with a company, the committee members are unlikely to bear personal liability. As with a company limited by guarantee, shareholders of an IPS do not share in the profit of an IPS.
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Table 4: Joint Ventures – Non-Profit Distributing Organisations (“NPDO”) (continued)

Administrative and Governance (continued)

- Charitable status:
 - Both a company limited by guarantee and an IPS can have charitable status. To secure charitable status, it must be demonstrated that the charity is for the benefit of the public.
 - If it is a company limited by guarantee, it has to be registered with the Charity Commission. Charity Commission registration is a guarantee of charitable status. An IPS is an exempt charity; that is, exempt from registration with the Charity Commission. Charities are entitled to corporation tax and business rate relief in most circumstances. Being charitable does not exempt a charity from all taxes and VAT can be a particular issue when trading is planned.
- Community Interest Company:
 - Designation of existing Company form where objects are community interest.
 - No fiscal benefits.
 - Asset lock (no distribution of assets to members) – must be continuously used in the community interest.
 - Limited profit distribution subject to a cap.

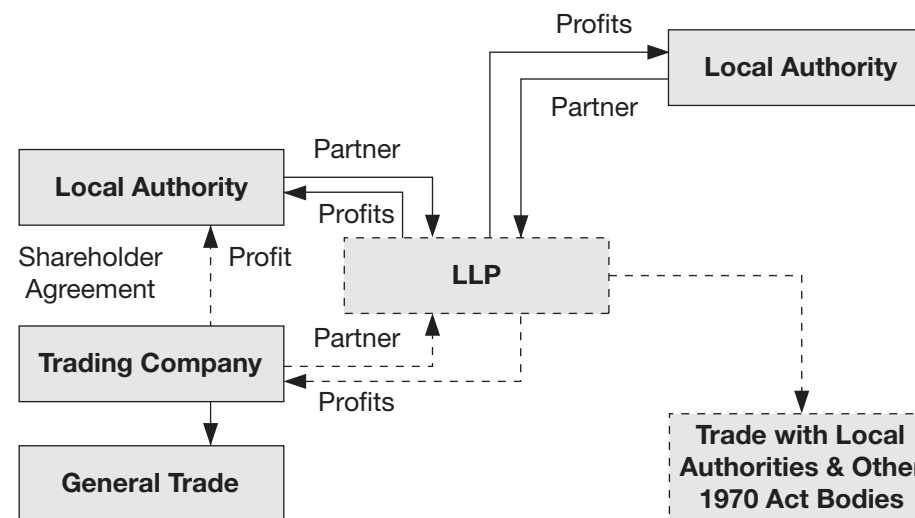
Table 4: Joint Ventures – Non-Profit Distributing Organisations (“NPDO”) (continued)

<p>Finance And Taxation</p> <ul style="list-style-type: none"> • The viability of the NPDO needs careful analysis; • The taxation benefits are important incentives but the appreciation of the implication of tax, given future plans, needs to be considered e.g. exemption from VAT may prevent recovery of VAT on future capital spending but have revenue benefits in the short-term; • Otherwise the financial considerations will be similar to other forms of joint venture. 	<p>Employee Issues</p> <ul style="list-style-type: none"> • There may be a TUPE transfer if the joint venture entity takes over the services of a local authority but secondment or the agency approach can be used; • The ODPM Code of Practice (2003) on Workforce Matters will apply if any transfer of employees is involved in any transfer; • Communication and consultation; • May be a need to consider secondments for all or some employees; • Where different terms and conditions apply to staff coming to the joint venture entity, there will be a need to determine whether to standardise or leave; • Membership of pension schemes can continue if admitted body arrangements are put in place but funding of pension bonds problematic for new start NPDOs; • Where different public sector pension schemes are used there will be a need to determine which scheme will apply to new recruits.
<p>Suitability</p> <ul style="list-style-type: none"> • Suitable for Categories B, C, E and F (where no private sector partner is involved) and D where the franchising arrangements involve a corporate entity; • NPDOs can provide efficient mechanisms for trading and operating services. However, they do not feature as leading providers of services for many sectors of the economy. They tend, in the main, to figure as a vehicle sponsored by the local authority e.g. a housing association for a stock transfer or a “leisure trust” for leisure services. Kent County Council is considering using this type of vehicle for trading purposes. • NPDO vehicles are not designed to be bought and sold. Therefore, if the intention is to create economic wealth by trading then a company limited by shares may be a more logical choice of vehicle. 	

Table 5: Limited Liability Partnerships²⁰**Description and Overview**

A partnership is defined as “the relationship which subsists between persons carrying on a business in common with a view to profit”. An LLP structure linked with a section 95 company would gain significant tax advantages at the cost of greater complexity – see Figure 9.

The power to enter into partnerships can be found in Section 2 of the Local Government Act 2000, assuming the purpose for entering to the partnership is either for the social, economic or environmental well-being of the local authority’s inhabitants.

Figure 9: Limited Liability Partnerships**Advantages**

- Significant tax advantages to a local authority;
- Outside the scope of Part V of the Local Government and Housing Act 1989;
- May be a suitable vehicle for a pension fund to invest in;
- Management is by agreement and flexible arrangements can be set out in the partnership agreement;
- Profits can be distributed by agreement; and
- Separate legal entity that can enter contracts in its own name.

Disadvantages

- Vires issues need to be considered;
- Cannot convert a company into a LLP or vice versa;
- Cannot be formed as a charitable body as a partnership has to be formed with a view to making profit;
- LLP have to file annual accounts and be registered with Companies House;
- Comparatively new and for some their workings will be unfamiliar.

²⁰ See Part 3 of Chapter 4 of *Structures for Service Delivery Partnerships – Technical Notes* (ODPM 2002 Updated by DCLG in 2006)

Table 5: Limited Liability Partnerships (continued)	
<p>Legal Issues</p> <ul style="list-style-type: none"> • Local authorities have made occasional use of a limited partnership under the Limited Partnership Act 1907 and the new framework for limited liability partnerships (as set out in the Limited Liability Partnership Act 2000) may be attractive for some projects; • A legal partnership is an arrangement where two or more persons come together to fulfil a business arrangement with a view for profit. Consequently, there will be many ‘partnership’ arrangements that local government may consider that will not satisfy that fundamental condition; • Local authorities will need to take their own advice as to whether each situation before them is such as to allow the legal partnership option to be considered. 	<p>Administrative and Governance Issues</p> <ul style="list-style-type: none"> • Similar to joint venture model.
<p>Financial and Tax Issues</p> <ul style="list-style-type: none"> • Partnerships are “tax transparent” in that the partners rather than the partnership are taxed – compare that with a company where the company is liable to corporation tax and the shareholders to corporation/income tax. 	<p>Employee Issues</p> <ul style="list-style-type: none"> • Similar to joint venture model.
<p>Suitability</p> <ul style="list-style-type: none"> • Suitable for where profit is involved and where the local authority seeks fiscal benefit on profits (and where it is not disadvantageous to the private sector partner) namely categories C, E and F (where a private sector partner is involved) and G and H. 	

Table 6: Partnering Contract²¹**Description and Overview**

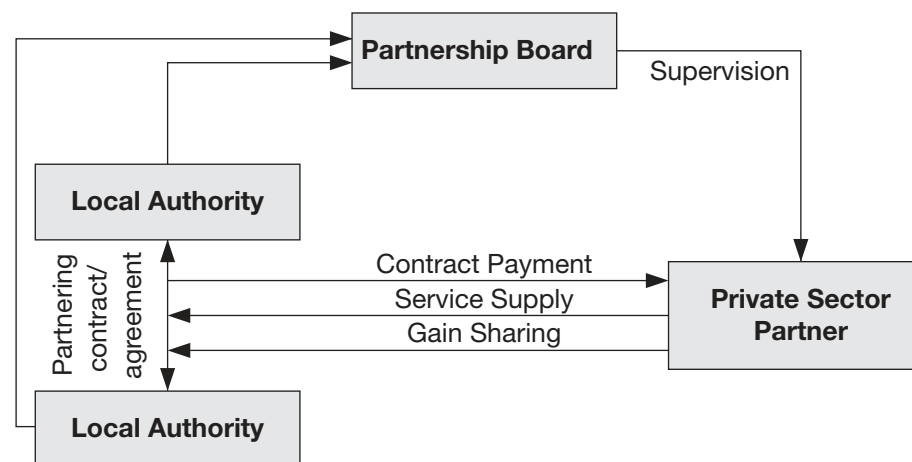
A partnering contract is a contract entered into between the local authorities and a private sector partner which envisages a collaborative role between the local authority and the private sector partner to discharge the private sector partner's obligations under the contract. In the instance of trading the purpose would be to facilitate trading and develop platforms for trading across a number of service opportunities.

The local authorities will enter into a contract to achieve the objectives. The contract may be directly with the private sector service provider or with a "joint venture" intermediary. Unlike an outsourcing contract, the local authority (and indeed other stakeholders) will have an involvement in the delivery of the services and development of trading activities, either through a direct contractual involvement or an indirect monitoring involvement.

The extent of the local authorities' (and other stakeholders') involvement will depend upon the nature of the partnering structure put in place. There are several ways in which a partnering contract can be constructed. Commonly, the framework is through a contract, with oversight being provided through a partnership board. However, partnership boards are not always used and alternative methods of securing involvement are employed. One of these can involve a joint venture company.

Following the spirit of the Egan Report: *Rethinking Construction* (1998) the partnering contract approach is seen as much less adversarial and more collaborative in approach. Whilst the spirit is not yet there for written contracts to be dispensed with, the partnering contract exhibits certain characteristics which are innovative and include:

- a less adversarial approach to contractual "disputes" preferring a means of resolving disputes through a hierarchy of mediation;
- an ability to re-define the deliverables and costs as circumstances change over time;
- a "team orientated" approach to contractual delivery;

Figure 10: Multi Authority Partnering Structure (Contract and Partnership Board)

²¹ The Treasury's Green Book provides a fuller description of a partnering contract

Table 6: Partnering Contract (continued)

- a collaborative approach to contract construction with the emphasis on resolving issues by reference to the spirit of commercial intention rather than the “letter” ;
- gain and risk sharing; and
- an “open book” approach to costs and profit.

The partnering contract may be “full service” from “day one” or be incremental for additional services and potentially other public bodies. Incremental partnering offers local authorities step-change in service provision with low risk and without comprehensive, all inclusive commitment. One of the greatest risks in the early years of a service delivery partnership is finding that the chosen partner does not live up to expectations, the relationship on both sides which took so long to cement is not developing, partners do not get on as well as originally hoped and, as a consequence, the partnership is unlikely to flourish.

The business case may extend beyond the provision of services to providing services to others (local authorities or indeed other private sector bodies and third parties). Where this occurs, the partnering model could be said to have developed into an enterprise model with the local authority making use of its trading powers.

Figure 11: Multi Authority Partnering Contract (JV Co as intermediary)

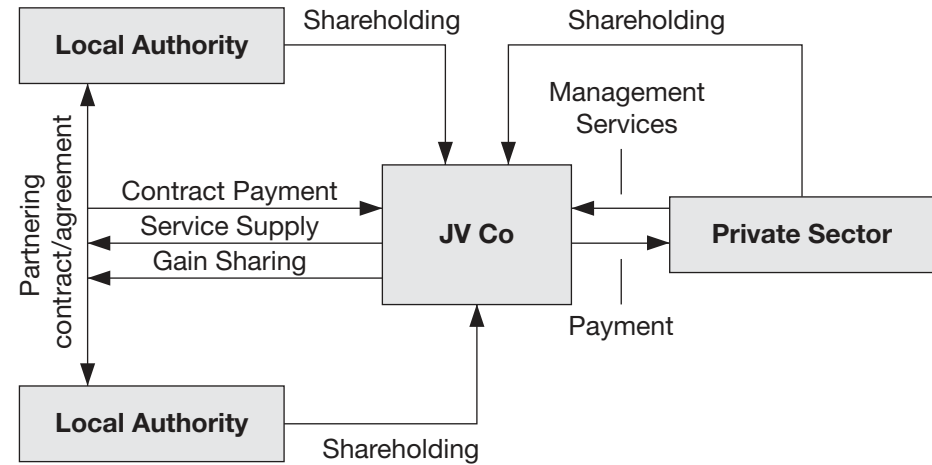


Table 6: **Partnering Contract** (continued)

Figure 12: Incremental Model

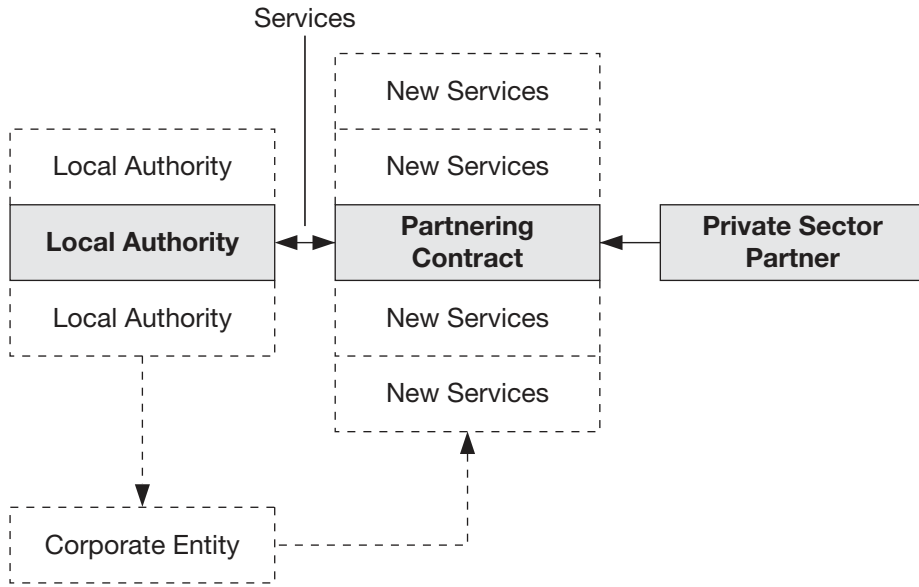


Figure 13: Enterprise Model

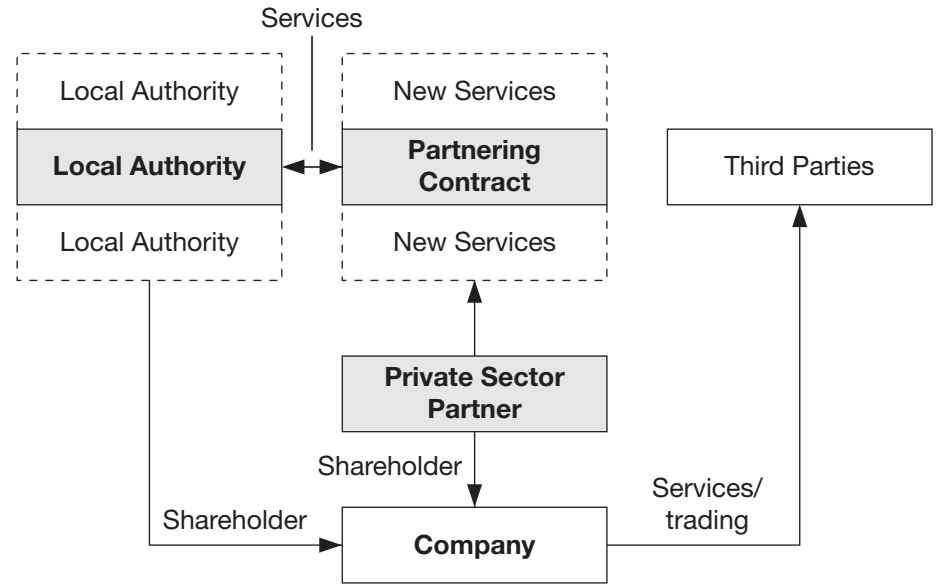


Table 6: **Partnering Contract** (continued)

<p>Advantages</p> <ul style="list-style-type: none"> • The local authority and other stakeholders have direct participation in the provision of the services and trading (either through a joint venture company or other arrangement); • Partnering is, in its nature, more collaborative and less adversarial; • The local authority will obtain the potential financial benefit of an acceleration of capital investment; • The structure will involve the private and/or voluntary sector and therefore will enable access to skills and other resources of the private sector; • The private sector partner will gain financial reward by reference to standards of performance; • The ability for more openness through open-book accounting; • The risks of trading fall principally on the private sector partner. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Depending upon the form of Stakeholders' Agreement, the private sector service provider may have concerns over Board structure; • The mechanism is more complicated (and therefore more costly to put in place for ongoing management) than conventional outsourcing; • Comparatively new market place and immature private sector.
<p>Legal Issues</p> <ul style="list-style-type: none"> • Most of the financial and legal issues associated with a conventional outsourcing will also be relevant to this structure (see Table 7); • There are unlikely to be any issues with regard to powers to contract; • The assets are normally provided and retained by the private sector partner; • The private sector provider will be appointed following the EU procurement rules for services. 	<p>Administration and Governance</p> <ul style="list-style-type: none"> • The characteristics of a partnering contract include: <ul style="list-style-type: none"> – the capability of levering investment over and above that available to the public sector; – an “open book” approach to costs and profit; – a less adversarial approach to contractual disputes; – a team approach to contractual delivery; – a collaborative approach to contract construction with the emphasis on resolving issues by reference to the spirit of commercial intention rather than the “letter”; and – gain and risk sharing.

Table 6: Partnering Contract²⁰ (continued)	
	<p>Administration and Governance (continued)</p> <ul style="list-style-type: none"> • Partnership boards have the following characteristics: <ul style="list-style-type: none"> • a formal arrangement; • joint representation to oversee and give strategic direction; • meet regularly, often on a quarterly basis, and often supplemented by a management board (of local authority client officers) meeting on a more regular basis. • A separate partnering agreement (in addition to the traditional service contract) will set down the parties' respective roles, relationships, and objectives in a way that demonstrates commitment to the partnership.
<p>Finance and Taxation</p> <ul style="list-style-type: none"> • It is in the nature of the contractual arrangement that all risks of costs and performance may be passed ultimately to the private sector service provider; • Business cases for trading propositions will need to be cleared with the partnership board. There will need to be consideration of exclusivity clauses to protect local authority partners from encroachment from private sector service provider's other businesses; • Payment mechanisms should be output-based and provide an incentive for improvement; • The taxation situation will be specific, both to the structure and services provided. Payments for services between corporate bodies give rise to potential tax disadvantages and unnecessary cost unless the deals are properly structured; • Profit shares would be dealt with through gain sharing arrangements. 	<p>Employees</p> <ul style="list-style-type: none"> • Code of Practice (2003) on Workforce Matters will apply where there is a transfer of employees; • Need for consultation and involvement; • Normally staff transfer under TUPE to a new employing organisation; • Local government pension arrangements for existing and future employees can be continued if the financial safeguards are put in place. There is a need for performance bonds to be assessed and, as a consequence, affordability reviewed; • Potential for secondments and management contracts to be substituted for some or all of the employees in some cases.
<p>Suitability</p> <ul style="list-style-type: none"> • Suitable for category C, E and F (where there is a private sector partner) and G and H. It is particularly suitable where the local authorities do not wish to take a share of the profit (although this can still be achieved through the contract) or participate in the service provider. It also removes the complexities of being a shareholder and officer or member directors. 	

Table 7: Outsourcing

<p>Description and Overview</p> <p>In this model, the local authority contracts with a private or voluntary sector provider for certain services in place of the local authority providing the services direct. ‘Trading’ can be dealt alongside an outsourcing arrangement by way of gain-sharing arrangements similar to those provisions that are put in place for partnering contracts.</p> <p>The service provider will provide the services to certain standards and to meet certain targets.</p> <p>The service provider will be paid a service fee which may be adjusted upwards (incentives) or downwards (penalties) as a consequence of whether the standards and/or targets have been achieved.</p>	<p>Figure 14: Outsourcing</p> <p>The diagram illustrates the flow of information and resources in an outsourcing model. On the left, there is a vertical stack of three boxes, each labeled 'Local Authority'. On the right, there is a single box labeled 'Private Sector Service Provider'. Three horizontal arrows connect the middle 'Local Authority' box to the 'Private Sector Service Provider' box. The top arrow points from the Local Authority to the Provider and is labeled 'Payment'. The middle arrow points from the Provider to the Local Authority and is labeled 'Performance'. The bottom arrow points from the Provider to the Local Authority and is labeled 'Gain sharing'.</p>
<p>Advantages</p> <ul style="list-style-type: none"> • Responsibility for trading rests with private sector; • Provides a practical and good value approach for some activities; • The successful bidder provides necessary investment in service; • Shortcomings in current service should be addressed by the operator; • A mature market exists in respect of a number of local authority services; • If the local authority approaches the arrangement from a partnership perspective, then both parties can develop a partnering arrangement. 	<p>Disadvantages</p> <ul style="list-style-type: none"> • The principal benefits of trading will fall to the private sector; • The experience in trading and the ability to build a platform for the future will be outside the authority; • Can be confrontational if the operator and local authority do not work on the relationship issues; • Does not always work if services are failing already; • If services are perceived as failing/poor, the market response may be poor; • Service failure by the private sector provider presents major difficulties especially in relation to transferring to a new provider and contractual liabilities; <ul style="list-style-type: none"> – Contract may not be flexible enough to adapt to change especially for longer-term (over seven years, say) contracts.

Table 7: **Outsourcing** (continued)

<p>Legal Issues</p> <ul style="list-style-type: none"> • Form of outsourcing contract with the private sector service provider crucial; • EU procurement requirements apply; • Contract needs to reflect the authority's legal duty to seek best value; • Services to be provided with regard to a specification; • Need to protect provision of statutory services; • May be asset transfer - both tangible and intangible; • Provider may seek warranties from the local authority in relation to the assets transferred or to be used in connection with the outsourcing; • Novation of existing contracts; • Absence of disputes and litigation; • Due diligence of the information forming basis of bid; • Potential for the contract to be certified if the contract is for a period over five years. 	<p>Administration and Governance Issues</p> <ul style="list-style-type: none"> • Client management function needed but may be comparatively small; • Performance requirements need to be carefully designed so as to provide measurable standards with continuous improvement and targeted against key requirements for service delivery; • Will not work well (and unlikely to attract major players) if local authority adopts confrontational "us and them" stance; • Requirements for service provision may be expressed either as inputs or outputs.
<p>Finance and Taxation Issues</p> <ul style="list-style-type: none"> • Trading needs to be supported by a business case – this approach is likely to involve the private sector leading and exploiting any intellectual property rights held by the authority; • The competitive nature should ensure most economic price for required quality of service; • The costs of a due diligence (verification) exercise by the private sector service provider may give rise to significant expenditure; • The deliverability of the output specification may require investment; • Payment mechanism needs to be subject to penalties for poor performance; • Assets probably owned by the private sector and capital control issues unlikely. 	<p>Employee Issues</p> <ul style="list-style-type: none"> • May be a transfer of employees or secondment on a transfer; • ODPM Code of Practice (2003) on Workforce Matters will apply where there is a transfer of employees; • Consultation rights and union recognition; • Pay and conditions of employees (salaries and other benefits); • Absence of claims, disputes and litigation; • Pension rights and payments into pension fund.

Table 7: **Outsourcing** (continued)**Suitability**

- Outsourcing is appropriate in relation to categories C, E and F (where there is a private sector partner) and G and H and in particular where:
 - The level of service requirements is known and relatively static;
 - When an authority is comfortable to adopt a ‘hands off’ approach;
 - There is an active private sector market place;
 - There is a need to invest in equipment and the private sector is willing to provide that investment.
- There is little or no appetite for direct trading by the authority or the perception is that the benefit of trading is modest.

CHAPTER 5

Other sources of information

5.1 This section provides information relating to:

- The Cabinet Office Shared Services team and toolkits
- The Regional Centres of Excellence
- Central government and shared services – extracts the Cabinet Office report e-Government Unit report '*Transformational Government – Enabled by Technology*' 2005
- Information relating to a large scale central government example of a shared services partnership i.e the NHS and Xansa

1) THE CABINET OFFICE SHARED SERVICES TEAM AND TOOLKITS

5.2 The Cabinet Office Shared Services team has been set up to look at how government and the wider public sector can achieve significant savings and increased effectiveness from modernising the provision of corporate services (particularly HR and Finance) and other shared services.

5.3 There are over 1300 public sector organisations in the UK and there is considerable scope to consolidate how we can share services across organisational boundaries so that our common processes are provided faster, better and cheaper.

5.4 The Shared Services team has been set up by the e-Government Unit and the Office of Government Commerce, and has employed leading consultants in this area. The team is headed by David Myers, formerly Chief Information Officer at DEFRA.

Toolkits available

5.5 The toolkit is divided into sections according to the type of issue you are trying to address. The full list of tools currently in the toolkit/planned for the toolkit is listed below. Follow the links to access detailed information for each section.

A. PROGRAMME MANAGEMENT

Programme level tools:

- Programme management guidelines
- Programme methodology overview
- Project initiation document (PID)
- Programme planning documentation
- Risk analysis overview

Phase level tools:

- Feasibility phase planning documentation
- Strategy phase planning documentation
- Design phase planning documentation
- Transition phase planning documentation
- Operation phase planning documentation

B. FEASIBILITY

Introduction and vision tools:

- Shared services introduction
- Shared services terminology
- Shared services diagnostic
- Programme vision presentation
- Case for action template

Case studies tools:

- Public sector case studies
- Private sector case studies
- Overseas case studies

High level assessment tools:

- Outline strategic options and business case

C. STRATEGY

Detailed data gathering tools:

- Structured interview guide
- Readiness assessment tool
- Force field analysis tool

Scoping tools:

- Service scope example
- Service scope criteria

Operating model tools:

- Sourcing options workshop (HR)
- Decision support workshop
- Offshore overview
- Target operating model
- Operating model options
- Sourcing options reality check

Landscape tools:

- Shared services landscape

Business case tools:

- Business case considerations
- Detailed business case
- Business case guidelines

D. SOLUTION DESIGN

Governance tools:

- Governance guidelines

People and organisation tools:

- Organisation design statement of work
- Organisation design component considerations

- Organisation design workshop presentation
- Organisation design plan
- Organisation design definitions
- Retained organisation – interface and benefit realisation
- Recruitment and training guidelines
- Job specification example

Process definition tools:

- Standard HR process definition
- HR design statement of work
- Introduction to HR process design
- HR process analysis example
- Standard finance process definition
- Introduction to finance process design
- Finance design statement of work
- Process responsibility matrix

Service definition tools:

- Service management guidelines
- Performance measurement overview diagram
- Performance measurement scorecard
- SLA and service management overview
- Public sector SLA examples
- Private sector SLA examples
- Private sector HR KPI examples
- SLA and KPI design considerations
- Baselining guidelines

Technology tools:

- Functional integration guidelines

- System requirements specification (CASS)
- Shared service technology standards

Charging / Trading tools:

- Trading arrangement guidelines
- Charging mechanisms

Accommodation tools:

- Service centre build guidelines

E. SUPPLIER ENGAGEMENT

Supplier selection tools:

- Market landscape
- ERP selection approach

Supplier Engagement tools:

- Procurement guidelines
- Example statement of requirement
- ERP engagement guidance
- Example contract / heads of terms

Exit management tools:

- Exit management guidelines

F. TRANSITION

Transition tools:

- Transition lessons learnt
- Change and communications presentation
- Stakeholder analysis framework
- Stakeholder communication strategy
- Stakeholder communication templates

G. OPERATION

Benchmarking tools:

- Benchmarking overview
- Key shared service benchmarks

Continuous Improvement tools:

- Continuous improvement guidelines

2) REGIONAL CENTRES OF EXCELLENCE

Background

- 5.6 The launch of the National Procurement Strategy in 2003 and the setting of a target efficiency gain of £6.45 billion were significant landmarks for local government. The Regional Centres of Excellence (RCEs) were established to support the implementation of the National Procurement Strategy and the delivery of council efficiency targets.
- 5.7 The RCEs are owned and managed by local government and have been established with support from the Government (Office of the Deputy Prime Minister) and Local Government Association (LGA). Governance structures and delivery plans enable authorities from across the region to play an active part. The RCEs are hosted by Councils and have Management Boards and Member Forums that have representatives from a cross section of authorities in their region.
- 5.8 There are nine centres of excellence and the contact details are set out below.

East of England Centre of Excellence

www.eastspace.net/eecpe/

Centre of Excellence East of England
 East of England House
 Meridan Way
 Norwich
 NR7 0TA
 Tel: 01603 704 010

Chief Executive: Tim Byles
 Email: tim.byles@norfolk.gov.uk

Regional Director: Steve Holland
 Email: steve.holland@norfolk.gov.uk

East Midlands Centre of Excellence
www.emce.gov.uk

East Midlands Centre of Excellence
47 Loughborough Road
West Bridgford
Nottingham
NG2 7LA
Tel: 0115 977 3875

Chief Executive: Roger Latham
Email: roger.latham@nottscc.gov.uk

Regional Director: Chris Allison
Email: chris.allison@nottscc.gov.uk

London Centre of Excellence
www.lcpe.gov.uk

London Centre of Excellence
Association of London Government
59½ Southwark Street
London
SE1 0AL
Tel: 020 7934 9967

Chief Executive: Martin Pilgrim
Email: martin.pilgrim@alg.gov.uk

Regional Director: Ken Cole
Email: ken.cole@alg.gov.uk

North East Centre of Excellence
www.nece.gov.uk

North East Centre of Excellence
Gateshead Civic Centre
Regent Street
Gateshead
NE8 1HH
Tel: 0191 433 2257

Chief Executive: Roger Kelly
Email: rogerkelly@gateshead.gov.uk

Regional Director: David Wright
Email: davidwright@gateshead.gov.uk

North West Centre of Excellence
www.nwce.org.uk

North West Centre of Excellence
Tameside Metropolitan Borough Council
Council Offices
Wellington Road
Ashton-under-Lyne
OL6 6DL
Tel: 0161 342 4080

Chief Executive: Janet Callender
Email: janet.callender@tameside.gov.uk

Regional Director: Colin Cram
Email: colin.cram@tameside.gov.uk

South East Centre of Excellence
www.kent.gov.uk/sece

South East Centre of Excellence
Kent County Council
Sessions House Room 1.60
Maidstone
Kent
ME14 1XQ
Tel: 01622 696 317

Chief Executive: Peter Gilroy
Email: peter.gilroy@kent.gov.uk

Regional Director: Andrew Larner
Email: andrew.larner@kent.gov.uk

South West Centre of Excellence
www.swce.gov.uk

South West Centre of Excellence
Suite 5
Stowey House
Bridport Road
Poundbury
Dorchester
Dorset
DT1 3SB
Tel: 01305 757 230

Chief Executive: David Jenkins
Email: d.h.jenkins@dorsetcc.gov.uk

Regional Director: Julian Morley
Email: j.morley@dorsetcc.gov.uk

West Midlands Centre of Excellence
www.wmcoe.gov.uk

West Midlands Centre of Excellence
Sentinel House
The Courtyard
Harris Business Park
Hanbury Road
Bromsgrove
B60 4DJ
Tel: 01527 839 200

Chief Executive: Rob Sykes
Email: rsykes@worcestershire.gov.uk

Regional Director: Heather Jasper
Email: hjasper@wmcoe.gov.uk

Yorkshire and the Humber Centre of Excellence
<http://www.yhcoe.rcoe.gov.uk>

Yorkshire & the Humber Centre of Excellence
1st Floor St George House
Great George Street
Leeds
LS1 3DL
Tel: 0113 247 5252

Chief Executive: Paul Rogerson
Email: paul.rogerson@leeds.gov.uk

Regional Director: Tony Wiltshire
Email: tony.wiltshire@leeds.gov.uk

**3) SHARED SERVICE IN CENTRAL GOVERNMENT –
EXTRACT FROM CABINET OFFICE E-GOVERNMENT UNIT
REPORT ‘TRANSFORMATIONAL GOVERNMENT –
ENABLED BY TECHNOLOGY 2005’**

5.9 The Cabinet Office e-Government Unit report ‘Transformational Government – Enabled by Technology 2005’ states that the shared services approach is needed to release efficiencies across the public sector and to support delivery more focused on customer needs. Technology now makes this far easier than ever before. Shared services provide public service organisations with the opportunity to reduce waste and inefficiency by re-using assets and sharing investments with others. Tackling this will be a major challenge as government prepares for the 2007 Comprehensive Spending Review. Particular attention should be paid to the following areas:

- **Customer Service Centres**, such as those for customer contact or payment processes, where there is significant scope for rationalisation

through sharing, particularly if central, local and other public sector bodies can team up.

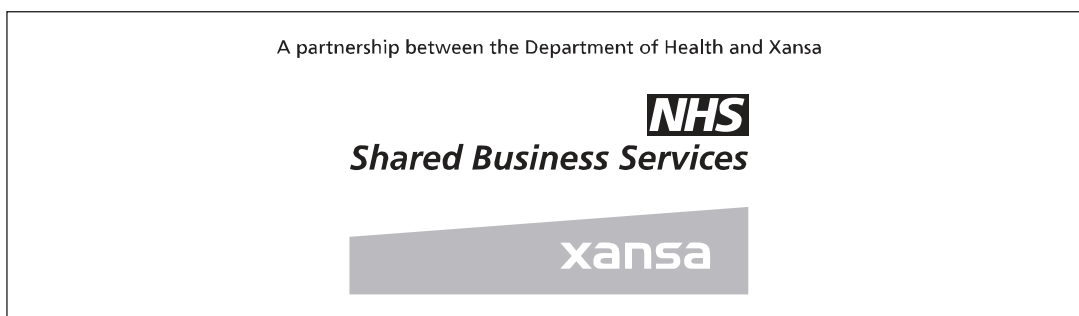
- **Human Resources, Finance and other corporate services**, where improved professionalism, standard systems and processes and effectiveness of these corporate functions should achieve efficiency gains across the whole public sector and in the functions themselves, as well as enhancing the employee experience and realising indirect efficiencies from better financial, personnel, knowledge and asset management.
- **Common Infrastructure**, where as government services converge around the citizen and organisations adopt commercial off-the-shelf technology solutions, the ability to share items of common infrastructure increases. Common technology will enable joined-up solutions, leverage investments and shorten the implementation timeframe of new reforms. To facilitate this a user-led Common Infrastructure Board will be established; it will be supported from the Cabinet Office and financed through user investment; and it will set out a roadmap and timetable for the delivery of common infrastructure.
- **Data Sharing**: data sharing is integral to transforming services and reducing administrative burdens on citizens and businesses. But privacy rights and public trust must be retained. There will be a new Ministerial focus on finding and communicating a balance between maintaining the privacy of the individual and delivering more efficient, higher quality services with minimal bureaucracy.
- **Information Management**: to facilitate the move towards more collaborative working on issues that involve a range of government organisations, common standards and practices for information management will be developed, with an effective range of tools to allow the most efficient use and sharing of information to all those across government that have a legitimate need to see and use it.
- **Information Assurance**: despite the difficulties of a fast moving and hostile world, underpinning IT systems must be secure *and* convenient for those intended to use them. The Government will further develop its risk management model to provide guidance on this, approved by the Central Sponsor for Information Assurance. And it will develop a simple, tiered architecture for its own networks to support this model in practice, with an updated application of the protective marking scheme for electronically held information. Government will also play its part to promote public confidence by leading a public/private campaign on internet safety and by a new scheme to deliver a wider availability of assured products and services.
- **Identity Management**: Government will create an holistic approach to identity management, based on a suite of identity management solutions that enable the public and private sectors to manage risk and provide cost-effective services trusted by customers and stakeholders. These will rationalise electronic gateways and citizen and business record numbers. They will converge towards biometric identity cards and the National

Identity Register. This approach will also consider the practical and legal issues of making wider use of the national insurance number to index citizen records as a transition path towards an identity card.

- **Technology standards and architecture:** to ensure that government’s technology is cost effective in terms of public and private sector best practice, the CIO Council (the Chief Information Office formed in January 2005) will determine a consistent approach to standards and architecture to be taken across government. Legacy systems will be progressively refreshed: by taking advantage of open standards, commercial off-the-shelf products and asset re-use, expenditure will be reduced and capacity freed for the transformational agenda. An overall strategy for geographical information will be developed under the leadership of the Geographical Information Panel recently created by Ministers.

4) AN EXAMPLE OF A LARGE SCALE SHARED SERVICE ARRANGEMENT IN CENTRAL GOVERNMENT

- 5.10 The following information is taken from information in the public domain relating to a partnership between the Department of Health and Xansa. It is written by the partnership setting out its benefits and what it aims to achieve.



BENEFITS

It all adds up – to a great proposition!

- 5.11 The whole premise behind shared services is to help you to do more AND save money. There is a huge pressure on NHS organisations right now to increase efficiency and drive out cost, in response to the Gershon review. NHS Shared Business Services offers you a demonstrable, low risk way of doing just that. In summary, we offer you:

Guaranteed service levels

We will agree a commercial service contract with you from the start, which will guarantee your levels of service, so you’ll know how quickly your month end processing will be done, and you’ll know how quickly we’ll respond to your queries. So you can rely on the service we provide, and get on with making the most of your expertise to support your business.

High quality, timely reporting

You will receive standard reports and have access to your information for ad-hoc analysis at any time. Flexible reporting tools mean you can produce your management information as you want it, and you control the degree of access you give to your budget holders. Being able to drill down into your information gives you full visibility and control.

20% guaranteed initial cost saving

Moving your financial transaction processing into the shared service centre allows you to make significant savings. We'll use our consistent base-lining methodology to help you to assess the current actual cost you bear for keeping your financial services 'in-house', and guarantee to save you 20% of that baseline cost. That frees up your funds for frontline care – and demonstrates your organisation's commitment to cost reduction and efficiency improvement.

Year on year savings

As we continuously seek to improve our processes, make increased use of technology and gain economies of scale, we commit to guaranteed fixed prices with 2% per annum price reductions.

Expanding range of services

We are continually working with our customers, seeking to expand our range of services to meet demand in NHS organisations. In addition to the immediate requirement for further services such as payroll and expenses, we're also always looking ahead at new NHS or Government initiatives such as Payment by Results, so we can help our customers respond quickly and effectively.

World class technology at extremely advantageous rates

As a 50:50 owner in the Joint Venture, the Department of Health has demonstrated the strength of its commitment to shared services in many ways, not least of which by entering into an Enterprise Wide Agreement with Oracle to provide software licences and support. The EWA means NHS organisations are able to realise substantial reductions in the capital investment relative to a 'build your own' strategy.

Simplified and streamlined procurement route

Complying with all the necessary rules and rigor associated with any large scale procurement in the public sector takes a lot of time and effort – and ultimately, this has a cost impact on your organisation. We have set up framework agreements approved by the Department of Health which streamline and simplify the whole procurement process, saving your time and effort which could be better deployed elsewhere.

Proven Migration Path

Any change from the status quo represents a risk. We minimise that risk for our customers with our proven migration methodology. Our multi-disciplinary migrations team will work closely with you to ensure that your transition to Shared Services goes smoothly – looking at all aspects of your current business processes, your organisation, your people, your systems and your data.

Financial support for transition

A comprehensive support package will be available for Trusts making the transition to NHS Shared Business Services, including financial support to assist with the cost of restructuring.

Technology

NHS Shared Business Services uses world leading technology based on Oracle 11i.

Customers

Customers in the NHS are already enjoying the benefits of NHS Shared Business Services.

APPENDIX 1

Definitions

Extract from the National Procurement Strategy document

What do we mean by partnering and collaboration?

As referred to here, 'partnering' means the creation of sustainable, collaborative relationships with suppliers in the public, private, social enterprise and voluntary sectors to deliver services, carry out major projects or acquire supplies and equipment. The benefits of the partnering approach include:

- better designed solutions
- integration of services for customers
- access to new and scarce skills
- economies of scale and scope
- investment
- community benefits (including jobs and local economic effects).

'Collaboration' describes the various ways in which councils and other public bodies come together to combine their buying power, to procure or commission goods, works or services jointly or to create shared services. Collaboration is a form of public-public partnership. Its major benefits are economies of scale and accelerated learning. The Local Strategic Partnership is a forum that can be used to promote collaboration at the local level and be a means through which procurement can help to deliver the community plan.

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