

Risk assessment is vital in collaborative relationships

The Charity Commission's recent report, *Consortia for the Delivery of Public Services: The Issues for Small and Medium-sized Charities*, is an interesting read.

The report finds that some charities that work in consortia to deliver public services do not check the financial health of their fellow consortia members and that, in some cases, trustees do not discuss the potential risks of consortium working.

It says that with some charities there was "a tendency not to carry out any form of due diligence on other consortium members despite planning to enter into a contract to deliver services with them".

The report says some charities did not think these checks were necessary, because they were familiar with the work of their fellow consortia members and had worked with them before. Others, it says, had decided not to carry out the checks because they expected the consortium or the commissioning body to do so.

While its sample is small – it is based on 19 telephone interviews – it does demonstrate that many small and medium-sized charities suffer from insufficient investment in their own capacity.

One factor behind the increase in collaborative working is the general shift from grant funding to contracting and to commissioners issuing larger contracts, often to very large profit-making organisations or 'prime contractors', which then demand partnership working.

This leaves many small and medium-sized charities vulnerable. Clearly they need to win contracts so they can deliver services to their beneficiaries, but many do so in ignorance of the potential risks of contracting generally and, in particular, of working in partnership or within consortia.



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These risks are very real, but they can generally be managed. This can be done by using legal structures, such as a new legal entity, or by putting in place contracts that clearly set out the parties' responsibilities and seek to cap their liabilities.

But not all smaller charities feel they can access these resources, which are often viewed as a cost that would be better spent directly on beneficiaries. With a cutback in the Charity Commission's one-to-one advice, this could get worse.

Paying attention

The commission's report also raises another serious concern with its finding that, even in relatively small organisations, where one might expect trustees to have a good grip on what is going on, the trustees did not have adequate oversight of the activities of the charity.

It might be understandable if this happened in a large charity where

many decisions are delegated to executive teams, but in small charities, perhaps with only a handful of employees, you might expect important decisions to be brought to the attention of the trustees.

The risks of contracting and partnership working are sometimes serious. Commissioners are increasingly being required to demonstrate value to the taxpayer and expect to see the contracted outcomes delivered.

They, and their prime contractors in turn, are seeking to enforce the terms of their contracts, so a failure to deliver services can have significant financial implications for a charity that has missed its targets. This, in turn, could affect partners within the consortia.

There is also the risk that contracts can be poorly put together or seek to dump a disproportionate share of liability on the charity.

Charity trustees can play a vital role in challenging the charity's employees to ensure these risks are appropriately managed, especially where their combined skill set and experience is often much wider than that of the employees, whose expertise may be in service delivery rather than contract negotiations and apportioning risk.

Of course, trustees will sometimes have to delegate some responsibilities to staff, but they must be clear about the scope of this. Are employees authorised to negotiate and sign a contract of a particular value, or do they need to bring it back to trustees for signing off?

Trustees must also remember, though, that delegation does not relieve them from their ultimate responsibility. If things were to go disastrously wrong, it is unlikely that a lack of authority would provide an adequate defence.

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