



Partnership session with Bates Wells

Hub Support Programme

N.B. none of these are verbatim transcriptions of responses given in the session and some answers here are extended and clarified.

What is the best Special Purpose Vehicle (SPV) for a partnership of equals?

A Company Limited by Guarantee would be a good option, with or without charity or CIC status (either of which could be applied for later). Many such SPVs have been funded by ACE and other national funders.

Where there are local authorities as part of the membership, that might complicate matters. Council legal teams may have a view on what structure they favour. Bates Wells would be able to support 1:1 discussions.

In a contractual-based alliance, the Hub Lead Organisation (HLO) will have to be in the driving seat for some things but the steering committee could have a rotational chair and democratise decision-making to some extent.

How do you overcome the lack of track record for an SPV?

Arts Council England have indicated that they could be flexible on this by looking back instead to the track record of the partners who will be members of the new entity. They are however awaiting DfE confirmation on this question.

Are three tiers (ACE, HLO, delivery partners) enough? Some think that for former Hub leads there sits an additional tier of local providers.

Yes, in addition to these tiers there will be a wider network of local providers of particular projects, in a paid or voluntary capacity and which could form part of an 'associate' membership. i.e. part of the wider network but not necessarily part of the governance of the HLO. They would retain their local connections and delivery.

If the SPV is to be set up after the decision, who submits the bid?

The main delivery partners may submit together and set out their proposed structure in the bid. We are awaiting further guidance from ACE on how this would work.

Would each music service need separate legal advice to enter a collaboration agreement or could the consortium have a single adviser?

The consortium could have a single legal adviser which could produce a collaboration agreement for the parties but that adviser would not be able to advise parties on the terms individually.

Isn't each member of the SPV board conflicted if they all represent delivery partners?

Potentially yes, but you can have conflicts as long as they are managed within a Conflicts of Interest framework (which would be set out in the governing documents and potentially a conflicts of interest policy).

Which of these can benefit from paying zero VAT on purchases?

In a collaboration agreement, the HLO's pre-existing VAT position will apply to purchases made by the HLO.

In general, local authorities and schools enjoy the most favourable VAT treatment. Charities benefit from some VAT advantages. Limited companies (those which are not charitable), Community Interest Companies and Limited Liability Partnerships will be able to reclaim input VAT (on purchases) in the usual way but will have to charge output VAT on most goods and services, including tuition.

The SPV's VAT position would not however influence its members' or contractors' VAT treatment. A music service within a local authority for example would treat VAT exactly as it does currently, including for activity partly subsidised by the grant and irrespective of the SPV's VAT status.

How can charity trustees delegate decisions to another organisation?

They wouldn't necessarily be delegating decisions about their own charity. They would all be members of a new organisation working to the same end and in doing so, each would be furthering their own charitable objects. Charity trustees are not delegating decisions about their own organisation and becoming a member of an SPV with other charities does not in itself breach their duties as trustees.

What is the best way to ensure governance of individual partners remains sovereign and unaffected by creation of a legal entity?

Sovereignty of member organisations is not affected by their membership of the SPV. In relation to the work they are delivering under the new grant, the SPV would be democratic. All delivery partners on the new entity's board will report back to their own organisations.

As members and directors of the SPV, the organisations and the individuals representing them would have a duty to act in the SPV's best interest and each individual could be out-voted on the board. It may also be appropriate for the SPV to bring independent members on the board who bring particular skills and expertise.

Will the board be made up of delivery partners? Our current board only has strategic partner representation.

The current board (in most cases – there are some exceptions among non-LA-led Hubs) is the governance board for the **Hub**. This discussion is about legal governance of the **lead organisation** under company and/or charity law.

It is likely that Hubs will be expected to have a strategic Hub board as they do at present.

Will local authority-led Hubs be disadvantaged in the process?

No, it's an open and equal process but LAs may experience more difficulties in terms of timings and internal processes.

Once operational, a separate legal entity may be able to make decisions more agilely, even with local authority members.

What level of due diligence would you recommend (following on from your point about responsibilities of charity trustees)?

Partners will need to consider the risks of the partnership in relation to their own size, exposure, constitution and pre-existing liabilities. Due diligence will respond to all these factors and others. Different partners are likely to undertake different levels of due diligence even in respect of the same partnership.

If the partner music services own the SPV and one of the partners became insolvent how would the liability be limited?

The insolvent partner would cease to be a member of the SPV and to be represented on the board. Ordinarily the loss of one member or director of the SPV would not increase liability on the remaining directors.

This could be complicated however if ACE have secured guarantees from the members, in which case some of that burden could shift to the remaining members as guarantors. The collaboration agreement could contain provisions dealing with exit of members.

Could a collaboration agreement not have a legal structure where a management board comprising all key partners acts as a check and balance on the HLO becoming too dominant; and also some legal agreement that basically says the HLO acts as the banker and data collector but in each local area, delivery is determined autonomously by local partners working to their proportion of the budget and local plan?

In principle yes. It would be important to ensure this was carefully drafted.

If the SPV is a company limited by guarantee, and initially owned by the partners, how would the ownership be affected if the company subsequently registered as a charity? I thought charities didn't generally have shareholders.

Companies limited by guarantee do not have shareholders but members who collectively own the company but for no financial return.