

Minutes for the Third Sector Employability Consortium Workshop

Wednesday 12 February 2014

Fife Voluntary Action, Craig Mitchell House, Flemington Road, Glenrothes, KY7 5QF

Present:

Kenny Murphy: FVA, Pegs Bailey: FVA, Christine Davison: FVA, Laura Crombie: Clued-up, Lynne Dunn: Kingdom Housing, Grant Forsyth: Client Action Team Fife Council, Sandra Beveridge: West Fife Enterprise, Billy Lynch: Frontline Fife, Duncan Mitchell: Fife Employment Access Trust, John Oates: BRAG Enterprises, Mary Hamilton: DEAP, Ross Buchanan: Enable

In Attendance:

Alastair Keatinge: Lindsay's, Murray Cree: Lindsay's, Joanna Clark: FVA, Trish O'Brien: FVA

Note of meeting:

Pegs Bailey outlined the context for the meeting with reference to the Draft Fife Employability Pathway Commissioning Framework and the commitment from Opportunities Fife Partnership to working more strategically with the Third Sector.

Alastair Keatinge, Head of Charity Law Services for Lindsays gave a presentation and facilitated discussion on consortium development and practice with input from colleague Murray Cree on employment related issues predominantly around Transfer of Undertakings (TUPE).¹

Alastair established that the phrases partnership working, joint working, collaboration, and consortium working all broadly shared the same definition: Organisations working together to deliver one project. The level of formality that this entails depends entirely on the project's focus, the organisations involved and the level of risk they might be exposed to. This was reflected by the experience in the room.

Organisational considerations:

There are several key points for any organisation to consider before entering into consortium discussions. These are:

- Getting the organisation's Board to buy into the consortium process –involve them early on in discussions of the pro's and cons of engagement.
- Checking constitutions to ensure an organisation *can* enter into a consortium. Some organisations may have restrictions on partnership working, or their geographical location. These restrictions may cause issues within a consortium and so these must be checked out.

¹ "The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006) protects employees when a business changes to a new owner and apply to what are known as 'relevant transfers' which may occur in many situations." <http://www.cipd.co.uk/hr-resources/factsheets/transfer-of-undertakings-tupe.aspx> (last updated February 2014).

If necessary constitutions can be amended if an organisation is dedicated to joining the consortium.

- Any potential partner must have the resources to enter into the consortium. These resources could include staff time, finances, or meeting space.
- Ensuring an organisation understands the risks associated with consortium working

Opportunities and Threats:

There was recognition that consortium working includes opportunities and threats. Some key pointers are highlighted below

Opportunities included:

Securing funding: for example in Fife, engagement in a consortium may be a key route to accessing elements of employability funding in the future.

Working better together: should give improved outcomes for clients and a more coordinated service in Fife

Increased influence: If you are part of the consortium you can influence how services are delivered and what proposals are put forward.

Threats included:

Mission Creep: When an organisation's service grows arms and legs out with their core purpose.

Reputation: As the consortium is made up of several organisations working in partnership they are at risk of each other's reputations, both negative and positive. To mitigate against this it is crucial to agree eligibility criteria for joining the consortium and on what basis we might ask a partner to leave as those in the consortium may be worried about the risk to their own organisation's reputation. Due diligence needs to be undertaken.

Resources: being involved in a consortium can require considerable investment of management time and resource.

Legal Liabilities: there are issues of joint and several liability with partnership working, meaning that all organisations in the consortium could be held liable for a breach, failure or other 'loss' incurred during the lifetime of the project.

TUPE: this is a very complex area of employment law. It doesn't just apply to the direct transfer of staff but can also apply when a member of staff spends the majority of their time working for another organisation e.g. the lead partner in a consortium. Members need to be aware of the implications of this when looking at roles and resources.

Equal representation: Was seen as a threat in terms of ensuring small organisations have an equal voice when competing or working with larger or national organisations.

Consortium considerations:

A number of consortium models were discussed:

- A partnership consortium – where all partners are equal
- One lead organisation at the head of the consortium of equals
- Create a new legal organisation to lead with all partners represented equally

In conjunction with these, organisations that did not wish to be directly involved with the consortium could offer their help or services as sub-contractors; allowing them to participate in the consortium without being directly involved.

VAT - depending on the level of formality involved consortium members would need to be aware of the regulations with regard to cost-sharing exemptions and seek expert advice on this.

The Threats and Opportunities raise other questions which organisations looking to enter into the consortium and the consortium itself must consider:

- How formal members would want the consortium to be? And what is the best structure/vehicle to use to deliver this?
- Who would be involved in the governance and administration of the consortium?
- Who would hold financial responsibility?
- How would matters relating to confidentiality be handled?
- What are the eligibility criteria for being a member of the consortium ?
- What is the consortiums shared vision/purpose ?
- How would decisions be made: majority or qualified majority?
- How do we deal with conflicts of interest when they arise?
- What is the procedure for disputes, removal, resignation, termination of membership?

Further reading:

Alastair recommended the NCVO website Charities Commission as excellent sources of information on consortium working in the third sector.

Enterprise Ready Funding

Finally Pegs shared a document summarising the resources that could be available to us through the Enterprise Ready Fund to help develop the consortium approach.

Meeting Actions

Action: Pegs to speak to Fife Council about consortium arrangements, would they contract out to a new organisation? What would they be willing to work with in terms of a third sector consortium?

Action: Pegs to disseminate questions for consideration prior to the next meeting on Wednesday 26th February 2014.

Action: Alastair to send Pegs the documents he referred to during his presentations to Pegs for dissemination if this is possible.