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THE IMPORTANCE OF CONTRACTS FOR JOINT WORKING IN HEALTHCARE

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Summary

In challenging times such as these, individual organisations often seek to collaborate with others to create synergy, to maintain, improve or extend their products or services, or to effect savings and other economies. The decision to do so can be voluntary or involuntary. To take but one topical example in healthcare, the 2011 Health and Social Care Bill requires GPs to form consortia to be responsible for clinical commissioning. Any form of working together requires the negotiation of some kind of clear contract between the parties or stakeholders involved, whether this contract is formal or informal. Successful outcomes from these negotiations generate enormous satisfaction for stakeholders. Unfortunately, many attempts to work together quickly come to grief. This is because the ground work has not been prepared carefully. With the best will in the world, conflicts and tensions arise, and these must be anticipated and dealt with constructively.

Taking partnerships as one of a range of ways of joint working, this paper analyses what can go wrong, and suggests practical ways in which a sustained, successful outcome is most likely to be achieved. It assumes that the principles and practices outlined here are relevant to any form of co-working. It argues that, to help address inevitable complexities inherent in any joint working relationship, the foundation for success is the articulation and constant monitoring of a clear, simple and realistic 'contract' between the parties involved. The nature of such a contract is outlined, and three checklists are provided to help in the development of a trusting, effective and robust joint working relationship between the various stakeholders.

Key Words:

contract, GP Commissioning Consortia, healthcare, joint working, negotiation, partnership

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Introduction

It is often helpful to think in terms of organisations as having a life span, and of their assuming different forms in different phases within it. For example, Arie de Geus (1997) asks why the 'average' multinational company has a life span of only 40 years. Often, it is less, although there are a few notable examples of enhanced longevity. The question therefore arises as to why and how some organisations give up the ghost more quickly than others, whilst others find ways to continue to survive and flourish, although often in a different form. Generally, those which demonstrate such resilience do so by adapting to or anticipating a changing business environment. They often do so by entering into one of a range of collaborative working arrangements with at least one other organisation. In some cases, they seek deliberately to collaborate in various ways with an even wider network of agencies. In addition to consortia, other organisational forms of working together include acquisitions or takeovers, mergers, joint ventures, alliances, association, networks, cooperation, collaboration, partnerships and networking. We can imagine these as lying at various points along a tight – loose, enforced - voluntary, or formal - informal spectrum. In this paper, I want to concentrate on the partnership relationship, although many of the principles and issues that I discuss here apply to other forms of working together, though perhaps to different degrees and in different permutations.

Health Partnerships as one way of Working Together

Pressures for organisations to engage in partnership and collaboration are by no means new, but once more they have become highly topical. The sample list of URLs at the end of this article bears out this assertion. This article has its origins in a much earlier study that I made (MacKenzie, 1987a and b) Since then, as an independent consultant, coach, mentor and facilitator working with Medical and Clinical Directors and GPs, and also more recently as Company Secretary of an educational charity, I have been preoccupied almost daily with the issues arising from perceived discrepancies between the rhetoric and the reality of partnerships and other forms of joint working, and with proposals to make partnerships work better. In so doing, I have found it helpful to build on the critique offered by Taket & White (2000) amongst others.

As a consequence of the so-called 'credit crunch' and the election of a Conservative-Liberal coalition government in May 2010, local authorities and NHS organisations are in a state of considerable turbulence and uncertainty. One thing that they do know is that they are being pressurised to make swingeing cuts in their budgets, staffing and services, and to share with

other agencies the responsibility for delivering certain services that were formerly exclusively theirs, in an effort to find economies and efficiencies.

Given the conflicting problems that demand immediate attention, and given the complex issues and ambivalent attitudes that they raise, the thoughtful design of 'partnerships' can easily be accorded low priority or inadequate preparation. Yet the case for closer collaboration between and within public, private and voluntary sector organisations is probably stronger than ever before. So how, and in what circumstances, can such 'partnerships' best be achieved? In my view, this can only be done through a realistic appraisal of what is possible, as well as by an open acknowledgement of the existence of inter- and intra-institutional conflict and competition, and of the need to find creative, effective ways of addressing this. At the same time, we need to believe that genuine collaboration is both possible and desirable in the correct circumstances. There is no panacea for achieving this, but there are certain core components and practices which, if appropriately combined, are more likely to result in working together successfully.

The Case for Partnership and Collaboration

Devoting adequate time and resources to negotiating and promoting partnerships and collaboration is all the more essential when political and market forces are imposing bewildering change upon, and competition within, the public and voluntary sectors. Unless issues of partnership and collaboration (as well as of conflict resolution and risk management) are addressed and enshrined in some kind of 'contract', the only possible outcome is likely to be even greater competition, wastefulness and confusion.

Factors Inhibiting Partnerships

Based upon my readings, conversations, observations and experience, I have come to the conclusion that the absence of such a 'contract' is a key factor in contributing to the lack of success in collaboration. These factors include:

1. Lack of clearly defined objectives
2. Inter-agency suspicion
3. Conflict of interest
4. Competition for resources and market share
5. Lack of proper servicing
6. 'Political' incompatibility of prospective partners
7. The wrong permutation of potential collaborators
8. Inadequate preparation, and
9. Inadequate resources devoted to the negotiations.

Factors Conducive to Partnership

On the other hand, successful outcomes are much more likely when some of the following ingredients are included in the mix:

1. A shared perception of a solvable problem
2. Incentives to work together (e.g. adequate funds, encouragement of staff or other stakeholders to behave collaboratively etc)
3. Committed individuals in key positions at all levels
4. Appropriate organisational climate, structures and processes
5. A clear understanding about the details of the relationship that is being established between potential partners. This, for me, is the essential 'contract'.

The Importance of 'Contract'

Institutions that are caught up in the current round of budget cuts, reorganisation or redundancies are understandably anxious about the negative consequences for their future, and for the services which they provide. So it's also understandable that they tend to seek safeguards and models to ensure that the best of the work that they regard as uniquely theirs is not lost or ignored. Constituent parts of large and complex organisations such as local authorities, NHS Trusts, GP consortia and other agencies in the healthcare economy also need a clear understanding of the basis upon which they collaborate internally to ensure comprehensive provision for their growing and diverse population of stakeholders. In forming the necessary arrangements and relationships for partnership, it seems to me that a central and helpful concept is that of contract.

The kinds of contracts that I have in mind would require collaborating units, agencies and institutions to work together on the basis of a clear set of working arrangements, with built-in safeguards for their respective legitimate interests. Paradoxically, this is especially important in conditions of austerity, complexity, chaos, emergence and uncertainty.

What is this 'Contract'?

> Effective partnership depends upon both (sic) parties recognising, and respecting, the other's contribution and sharing resources in this way calls for some form of agreement between the parties
>
> (UDACE 1987: 14 – 15)

The contract is the process and framework that governs the way in which power and resources are distributed between or amongst the parties involved. Here, I am not using the term 'contract' in a strictly legal sense, but rather in a way that is more common in business, in some aspects of medicine, and in social work or counselling. In this context, the overriding aim is to establish faith and trust between the various parties concerned, to enable optimum participation, and to bring about the consequent easing of anxiety, by setting out 'rules' that are as clear and as agreed as possible in the circumstances (Douglas 1978: 34).

For our purposes, a contract can perhaps most easily be understood as:

> A mutual agreement between two or more parties that something shall be done or *foreborne* by one or both
>
> (The Shorter Oxford Dictionary, my emphasis)

In this sense, a contract can be written or verbal, or it can be a combination of writing and speech. But it must always aim to be explicit. Contracts usually require careful preparation and negotiation, and a time limit is usually stated or implied. They become re-negotiable whenever any of the parties considers that its terms are unfair or harmful to itself or to its clients or principal stakeholders. Contracts must also be realistic, concerned with what is possible, and they must acknowledge the existence of any powerful external forces that are beyond the immediate control of the parties concerned (Douglas 1978: 65 – 66).

Elements of a Workable Contract

Both the FEU and the UDACE documents that I have mentioned already agree on the general features of such a contract. In addition to any specific details, it seems to me that such contracts must include the following features:

1. A statement of the aims of the collaboration
2. A list of the collaborators
3. An agreement on who or what is to benefit
4. A statement of what each party has agreed to do
5. A schedule of agreed events and actions
6. An enumeration of what resources each party is prepared to contribute to the collaboration
7. Agreed criteria to evaluate the success of the collaboration
8. An indication of how and when the contract can be altered
9. An anticipation of the consequences of altering the contract (e.g. any 'penalties' to be incurred by the party breaking the contract)
10. Agreement on the duration of the contract, and on procedures for its renewal, re-negotiation or cancellation.

Conclusion

The trick, of course, is to negotiate a clear statement of these principles without producing a lengthy, bureaucratic document or a set of negotiations that are counter-productive in inhibiting innate goodwill and enthusiasm. The precise form and content of each contract will be unique to each partnership or joint working arrangement, and cannot be imposed as a universal formula. It must be a local, dynamic agreement that they create themselves. In developing such contracts, however, the principles that I have outlined here should serve as a useful framework.

These ideas represent a brief summary, restatement and extension of work that I began some 20 years ago, and that I am continuing to develop. From this, I am proposing that effective contracts offer the most hopeful basis of sound partnerships – and of other forms of joint working arrangements - between and within organisations that are contemplating, or are involved in, developing closer links with each other for specific projects and initiatives, including healthcare. I fully recognise that the process of partnership and collaboration is complex and demanding, but I would argue that, if a clear and workable contract is negotiated between the principal parties or stakeholders, this process has a far greater chance of success.

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Useful URLs

Making the Most of Partnership Working: Employers Organisation for local government **http://www.lgpartnerships.com** accessed 15.6.10

Partnership Tools: Employers Organisation for local government **http://www.lgpartnerships.com/resources/tools.asp** accessed 15.6.10

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Biographical Note

Dr Bob MacKenzie is Principal Consultant of Bob MacKenzie Associates. Bob has been a manager, academic and independent organisational consultant for many years. He is also a Professor of Management Learning with the International Management Centres Business School. Bob has a particular interest in management, leadership and organisational development, and has worked as a professional critical friend with public, private and voluntary sector organisations in several different countries, offering challenge and support as they address their change agenda. In recent years, Bob has been working particularly closely with senior medical managers in the secondary and primary healthcare sectors, including many Medical and Clinical Directors. Bob would welcome feedback on the ideas set out in this article, and he can be contacted by e-mail via bob_mackenzie@btopenworld.com, by telephone on +44 (0)2380-238-458, or by mobile phone on 07855-458-691.

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