**Case study 2**

**Forming a new company: Open4Learning Ltd**

**Overview**

Four not-for-profit institutions in Yorkshire who work in the lifelong learning sector decided to come together to form a new company specifically to hold Skills Funding Agency and Young People’s Learning Agency contracts. What happened?

**Why read this case study?**

This case study describes the research and decision-making processes that have led to an agreement to form a new charitable company limited by guarantee. To fully achieve this remains the longer-term aim of the partners but short-term circumstances have prompted an interim solution. The case study will be of interest if you are considering the issues for charitable sector organisations who each wish to retain their own identity and ethos at the same time as contributing to a shared enterprise for the purpose of qualifying for a contract.

**“We are all striving for better quality of provision and cost effectiveness, but balanced with local issues and needs. … It has taken a long time to get the respect of local people.”**

Jenean Kirk, MaTReC

The interviews for this case study were in two sets: first, in early spring 2011 to find out what the partners were planning, and then in July 2011 to get a substantial update on how plans were materialising and any new issues emerging.

**Partnership profile**

In early spring 2011, discussions were between four providers, all operating in the lifelong learning/adult and community learning sector: Swarthmore Education Centre in Leeds, Forster Community College in Bradford, Manor Training and Resource Centre (MaTReC) in Sheffield and the Open Door Adult Learning Centre in Sheffield. All held contracts with SFA, generally under the Adult Learner Responsiveness funding stream. Their geography meant that none of them were competitors. The level of SFA income varied: at Swarthmore, for example, it represented about 35% of its work while at MaTReC it was 87%. Under the new collective arrangements, contract value was estimated at reaching approximately £1 million.

The central ethos of all these providers places learners and their needs at the heart of their activity. It is critical to them to retain the independence and flexibility to protect their provision. Many of their learners are from deprived communities and benefit from the responsive support offered.

“We are in it for our learners.”

Maggi Butterworth, Swarthmore Education Centre

By the interview in July 2011, both the membership and model of the new contracting arrangement had changed. One member – Forster Community College - had been asked to step down for the present time; it was above the MCL threshold and needed to prioritise responding to a critical Ofsted report. And, due to pressures exerted by the timeframe for ACTOR registration, it was felt that a pragmatic decision had to be taken and that one of the partners should act as the lead contractor on an interim basis. Open Door is now holding the SFA contract to the value of approximately £700K, with MaTReC and Swarthmore as subcontractors.

**Developing new contract arrangements**

1. **What type of contracting arrangement are you setting up?**

Each of these organisations spent time both talking with other providers and researching different contracting arrangements. All three were approached by other ‘lead’ providers, and have held meetings with local colleges, most of whom were interested in gaining subcontractors. However, the level of management fees proposed would have top sliced income to the extent that the viability of the provision would have been threatened. Each also investigated the option of joining with other small, like-minded providers with charitable status with the aim of retaining independence through creating a joint company of some sort. The respective Boards of Trustees have been consulted at every point and their permission sought.

The three providers who have now come together have already had a positive experience of working collaboratively through the LSIS Peer Review and Development programme and had begun to develop a relationship of trust. The Director of Swarthmore sought legal advice on options on behalf of the group. The initial preference was a Limited Liability Partnership, but this structure proved not to be appropriate to the charitable sector. The decision has now been taken to set up a new incorporated body, a company limited by guarantee and also registered with the Charities Commission that in the longer term will hold the SFA contract with each of the three partners being an equal guarantor. Open4Learming – as it will be called - will subcontract delivery to each provider. Voluntary Action Sheffield has helped to draw up the contract and this has now been signed after being approved by all the organisations’ Board members.

As preparation continued throughout early spring, the scope of what was required in order to register on ACTOR and go through due diligence became clearer. Although they were disappointed, the partners knew that their decisions had to be sharply focused on the practicalities of securing their contract and they agreed that they would be in a better position if they went for a lead contractor/subcontractor arrangement. With the support of an external facilitator from LSIS, they held a meeting to consider who would be best to take on the lead role as an interim measure for 2011-12. Open Door is a grade 1 provider, although it is not the largest, and it has stepped in as the lead. This structure is reflected in a formal agreement but the actual way the group is now working is as a consortium of partners.

“The new company is set up on paper but we felt we were not in a good enough condition to do it in time. We are aiming to move to Open4Learning for 2012-13.”

Jenean Kirk

1. **How will it work?**

* **Leadership and governance**

Each provider has two directors on the new company board and has one vote. Providers have all selected their current chief executive/director as one board member and have a choice of whether to invite a staff member as their second or a member of their organisation’s Board of Trustees. As the new incorporated body is also a charity, its directors are also defined by law as charity trustees. One early task will be to draw up a ‘code of conduct’ of some sort that covers, for example, what will be done if any organisation under-performs.

The aspiration is for ‘leadership’ to be a coordinated function across the three organisations. Exactly how this is to be achieved is yet to be finalised.

* **Operational arrangements**

All operational arrangements are being discussed through a series of partnership meetings, again with the support of an LSIS external facilitator. The plan is to capitalise on the strengths of individual partners to lead aspects such as data management, quality assurance, financial management, administration and so on. In early spring 2011, partners recognised that agreement on this might not be easy; they thought it might even feel uncomfortable to declare to each other that they had good reason to lead. However, they were confident they understood each other and what needed to be done for the sake of the new company.

As the first stage, each partner completed a mapping exercise for each of these aspects that itemised their own approach and organisation’s state of play and why they would like to lead on this, or not. None of these aspects were new to them. The split of responsibilities has now been agreed and formalised.

* MaTReC is leading on quality assurance.
* Open Door on finance management and data.
* Swarthmore on strategy, risk management, business planning and governance.

Topics have been identified for each of these areas and key dates timetabled. An insight into how this should work is shown below in the section on quality assurance.

* **Strategy**

As well as developing a joint strategy, all partners aim to maintain their significant local profiles and so will need to retain – or even build – relationships with local colleges, other providers and employers.

* **Quality assurance arrangements**

Responsibility for quality assurance lies with MaTReC on behalf of the partners. Their role includes:

* coordination directed towards both meeting SFA requirements and expectations and sharing practice in order to improve;
* setting up and leading joint meetings on quality matters;
* reviewing paperwork to see if there is mileage in all using the same documentation; and
* documenting and evidencing the process and decisions taken, in case of Ofsted queries, for instance.

The first step was to identify key dates, such as SAR reporting, and set up a calendar so that each organisation could establish its own relevant key dates. This means that everyone knows when they have to prepare and exchange documentation in readiness for any SFA or other requirements.

1. **What do you see as the benefits of this type of contracting arrangement?**

Six key aspects were raised in early spring 2011:

* the ability of each provider to retain individual identify and ethos constructed carefully over time, along with treasured relationships with staff and learners. Speaking in July 2011, each provider is now fully confident that autonomy will be preserved;
* bringing the least disruption to learners – familiar approaches and paperwork can be retained;
* sharing good practice, especially on approaches to quality improvement;
* giving “more strings to our bow” – the new company will give greater procurement potential and may help with tendering for bigger contracts;
* possibly achieving economies of scale without impacting on learners. In July, it is too early to see any impact of this sort; and
* a stronger voice for raising concerns and therefore greater influence.

1. **What do you see as the challenges and risks?**

In spring, the main challenges were seen as:

* providers’ locations – distances apart mean that face-to-face gatherings require more time; and
* establishing – and improving – quality, given Ofsted grades are not consistently good.

In July 2011, a new issue is assuming prominence: the uncertainty around the changes to fee remission related to Job Seekers’ Allowance and its unpredictable impact on income. The consortium does not have much margin. Government principles are determined but, to date, the timeframe and transition arrangements being designed by JobCentre Plus are not. However, Swarthmore has successful strategies that can be shared with the other two partners for supporting learners in categories like this so there is optimism that problems can be overcome.

1. **What next?**

As part of actively moving forward to Open4Learning, the partners are talking to three additional organisations based in new geographical areas and working with different target groups: a community college, a school of dance and an organisation delivering work-based learning and apprenticeships. Contacts have been made through the networks of existing partners. These three are interested in finding out about adult and community learning so there are benefits on all sides. The community college is not presently affected by MCL but they might be open to being used as a trial for testing the process the consortium is developing for bringing in new partners. This is based on a **“balanced score card”** system. The consortium fully expects the MCL threshold to move upwards and wants to be ready.

1. **Key factors for success**

Two key points leap out: the determination and trust shared between the partners, allied to a powerful vision tempered by clear-sighted pragmatism. The process so far has been characterised by difficulties and uncertainty due to externally imposed requirements. However, the partners have not avoided uncomfortable decisions, such as asking their initial fourth partner to step down, or risked the greater long-term prize of a fully functioning “Open4Learning” consortium by refusing to compromise over the shorter term. Instead, they are using their experiences as learning opportunities to enable them to understand and plan for more effective ways of working for the future, For example, given that Open Door, the lead contractor in their 2011-12 arrangement, is one of the smaller providers, capacity pinches may arise. If – or more likely when – this happens the other two partners are ready to help. It has already been recognised that problems could occur with any of the three in relation to their joint responsibilities; but they all have a good track record and through the systems they are setting up, such as the calendar, each will be able to alert the others, ahead of SFA deadlines. This approach squarely models their aspirations for the prospective Open4Learning.

Contributors were Maggi Butterworth, Director of Swarthmore Education Centre, Jenean Kirk, Chief Executive, MaTReC and Terry McHale, Open Door Adult Learning Centre