

Options for Partnership

Hertfordshire Waste Partnership

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1.0 Introduction

Partnership working between authorities, specifically, between and across tiers of local government in waste management, is being encouraged by Government. In the past, Government has considered – but has always shied away from – bringing responsibilities for collection and ‘disposal’ together under a single tier of local Government. The separation of responsibilities is generally regarded as being ‘less than optimal’, and is regarded as being quite peculiar by most European neighbours. Government has threatened, in the past, that if joint working did not become a reality, it would re-visit the separation of responsibilities. Increasingly, over recent years, it would appear that the willingness of government to support waste projects has been influenced by views as to the strength of existing partnerships. This has not, in the past, required any formal partnering arrangements. This paper aims to provide some introduction to issues concerning partnering, understood both as ‘working to achieve common objectives’, and more formal arrangements designed for specific purposes.

1.1 The Past

The separation of responsibilities between waste collection and waste disposal has been less problematic in the past. Waste collection authorities collected ‘refuse’ and delivered waste to designated points for disposal / onward transfer for disposal. Since the ultimate destination was a facility:

- Which did not demand a relatively fixed throughput (both from a technical and a financial perspective); and
- the functioning of which was not seriously compromised by changes in the nature of material being delivered,

then the need to know what would be collected, and what sort of treatment it might require, would not have mattered greatly.

1.2 The Future

In a completely changed situation, where increasing amounts of waste are being diverted from landfill by WCAs’ activities, and where non-landfill treatment facilities are being sought, these questions assume greater importance.

Furthermore, whilst landfill has historically been very cheap, this will not be the case in future. Since:

1. Landfill costs are rising; and
2. WDAs have to comply with their obligations under the LATS, which implies
EITHER:
 - i. Continuing to landfill at rising cost, whilst also purchasing landfill permits as necessary;

OR

- ii. Procuring non-landfill treatments, the costs of which appear to be escalating, at present (moving towards £90-100 per tonne)

WDA budgets will clearly increase significantly if no action is taken to reduce quantities being sent for disposal. It would appear to make sense, therefore, from the WDA perspective, to reduce the quantity of waste being delivered for disposal.

WCAs, on the other hand, would find that waste collection expenditure would be minimised where all waste was simply collected as refuse (with the possible exception of some bring schemes and some low-intensity paper collection schemes). This is no longer a serious option as WCAs have now been set statutory recycling targets. Meeting even the lowest targets will, for most authorities, have implied additional costs. Some of this increased cost will have been offset by transfers from the WDA to the WCA in the form of recycling credits.

However, moving beyond statutory minimum targets is likely to imply further investment on the part of WCAs. In the absence of incentives encouraging WCAs to do this, WCAs might be understandably reluctant to make additional investments in source separation, or to make decisions in respect of collection systems that may (albeit possibly in the short-term only) be received less than favourably by the public. The recent consultation on recycling credits – which effectively caps the level of credits at a level

It can be seen from this that there is a developing divergence between the financial interests of the two tiers of local government. In the past, the interests of WCAs and WDAs were effectively aligned as the cheapest options for both parties were reflected in the prevailing practice. In future, this will no longer be the case. This is illustrated in Figure 1.

Figure 1:- De-alignment of WCA/WDA financial interests over time

	PAST	FUTURE
LOWEST COST FOR WCA	REFUSE COLLECTION	MEET STATUTORY TARGETS, COLLECT REST AS REFUSE
LOWEST COST FOR WDA	LANDFILL DISPOSAL	DEPENDS UPON PRICE OF LANDFILL ALLOWANCES
LOWEST COST FOR WHOLE BUDGET	REFUSE COLLECTION PLUS LANDFILL DISPOSAL	HIGH RECYCLING AND COMPOSTING, PHASE IN NON-LANDFILL TREATMENT TO AVOID

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		LATS EXPOSURE, LANDFILL BALANCE
WCA AND WDA INTERESTS ALIGNED?	YES	NO

This situation requires that two questions are answered:

1. **Considering the system as a whole, what is the most cost-effective collection, treatment and disposal strategy?** Only once this is answered is it possible to determine which approach to service provision truly delivers best value to the Council Tax payer.

Based on the known likely costs of future treatment and disposal and supported by collection system modelling work (carried out as part of the same project under which this report has been produced), it appears clear that the optimal solution is likely to be based on a relatively high level of recycling, with the authority treating sufficient waste through non-landfill treatments to stay 'in the black' as regards landfill allowances, with the balance of material being landfilled.

2. **What arrangements, either legally constituted or more informal, will lead to the most efficient delivery of waste services across the whole of the County?** The rest of this paper discusses the available options.

2.0 The Case for Partnering / Joint Working

The Hertfordshire Waste Partnership currently consists of a relatively loose arrangement whereby County and Districts share information, and in some cases, pool resources to achieve economies of scale in specific initiatives, or procurement of specified items. Initiatives where joint working has been prominent include waste reduction initiatives and in the preparation and revision of the Municipal Waste Management Strategy.

More recently, two Districts – Three Rivers and Watford - have agreed to share their depot. This is probably the most significant partnering initiative between authorities within the HWP since it implies formalised collaboration in a significant aspect of service provision. Furthermore, it has the potential to improve efficiency of service delivery.

2.1 Partnership Working Enabling 'Rational' Planning and Procurement

Irrespective of whether the interests of the WCAs and WDA could be aligned, it would be important for the WDA to have a clear idea of the plans of the WCAs, and the estimated quantity of waste, and broad type requiring one or

other type of treatment, which would result. This is *necessary* for the WDA to be able:

- To devise a strategy for delivering its obligations under LATS; and
- To procure non-landfill treatments (whether for source-separated organic materials, co-mingled recyclables, or for residual waste) in such a way that prospective providers have greater certainty concerning the materials they will be dealing with (so reducing risk, and hence, the price of the service).

Consequently, at the very least, clear communications between WCAs and WDA are *required*. This is the type of joint working in which the HWP is currently engaged.

2.2 The Case for Deepening Joint Working to Deliver a Value for Money Strategy

An effective strategy must seek to deliver value for money in 'whole service' terms. If the above representation is accepted, then **an effective strategy, which proves to be efficient in its delivery of services, will be one in which WCAs and WDA collaborate in such a way as to ensure mutuality of interests in delivering the preferred solution.**

At its most basic level, this implies reviewing the relationship between the WCAs and WDA. At present, the principal mechanism for encouraging WCAs to recycle is through the payment of recycling credits from the WDA to the WCAs (and third parties at the WDA's discretion). Somewhat ironically, because disposal costs are rising, and because this is likely to give rise to a situation where the payment of recycling credits exceeds the costs of recycling collections, Government has proposed a scrapping of the existing mechanism in favour of one in which:

1. EITHER the WDA and the WCAs reach agreement on their own arrangement;
2. OR the system remains much as it is now, but with the level of recycling credit being capped (so that it does not reflect increases in landfill tax, let alone the (almost certainly even higher) costs of alternatives to landfill).¹

In respect of 1, it is useful to note that the HWP has already discussed this matter and agreed that an alternative arrangement would be useful.

However, at present, the WDA pays 'conventional' recycling credits on dry recyclables, and does not pay recycling credits on biowaste delivered to its own facilities for composting. If this situation is maintained, then no additional incentive will be channelled to the WCAs to collect more material for recycling

¹ This is provided for in the Clean Neighbourhoods and Environment Act, Section 42 of which amends Section 52 of the EPA. Defra issued draft Guidance on the Recycling Credit Scheme in January 2006.

and composting. Because of the rising 'shadow costs' for disposal, particularly for biodegradable waste, this is a position which may lead to 'over-investment' in residual waste treatment / disposal and landfill allowances on the part of the WDA relative to what might be considered rational from the perspective of 'total system costs'.

For this reason, it makes sense for the development of a strategy to proceed on the basis that a mechanism can be found which improves the business case for investment of both the WCAs and the WDA. The exact design of this is to be determined, and will require a form of legal agreement between the WCAs and WDA.

The fall-back solution for the WDA – if it should be considered as such – might be the WDA stepping in and making use of the powers of direction given to it under Section 31 of the WET Act. This is unlikely to be satisfactory to those who might be so directed.

3.0 Issues Shaping Consideration of Further Deepening of Partnership Working

Whilst the form of Partnering discussed in the previous sub-section would appear to be highly desirable, if not necessary, for the delivery of the optimal strategy, this does not cover all the existing partnering possibilities. The WCAs and WDA will have to consider the rationale for joint working from a number of different perspectives:

- a) What gains are to be made from partnering, and how can they be secured?
- b) What is the anticipated scope of future procurement exercises?
- c) What legal forms of partnering exist, and what might be most appropriate for the HWP authorities (having considered a) and b) above).

The first two of these are closely related, as will become clear. All the above issues are discussed in what follows.

3.1 Gains from Partnering

There is no point in partnering for its own sake. Deepening partnership arrangements beyond the type of joint working necessary to re-design the nature of financial transfers between WDA and WCAs, needs to be justified by a view as to what will be gained through partnering.

Essentially, partnering either occurs:

- a) Between more than one (possibly all) WCAs, also called horizontal integration; and
- b) Between the WDA and the WCAs, called vertical integration.

The question arises as to what gains might be expected and of what magnitude.

3.1.1 Horizontal Integration

Partnering across the WCAs is likely to be considered in the context of the more significant infrastructure for which WCAs have responsibility. In particular, waste collection services are the ones most likely to show potential for cost savings where the services are being used / procured jointly.

In the basis of previous analysis carried out elsewhere, these savings are likely to occur in the following ways:

- a) Improved logistics through better utilisation of vehicle stock. In any given WCA, it is common to find 'more urban' and 'more rural' rounds. However, the size of WCAs does not always justify the most rational choice of vehicle to suit the specific rounds being serviced. Inevitably, if such a choice was made, the degree of redundancy across vehicle types could be high. Where larger areas are being considered, these may allow more effective utilisation of vehicles better adapted for specific types of round, effectively improving the efficiency of logistics. Even so, securing these potential benefits requires a thoughtful contractor and whilst the potential for securing these benefits exists, in practice they may not be so significant; and
- b) Savings through improved spatial logistics and reduced management costs associated with joint use / more rational siting of depots. In our analysis elsewhere, it is in joint management of / rationalisation in the number of depots where savings are most likely to be made, and where they ought to be most easily secured. These benefits may be significant.
- c) Savings from economies of scale in procurement of basic equipment;
- d) Savings from economies of scale in more significant investments such as MRFs where materials are collected co-mingled. This assumes that the co-mingled approach is the more efficient approach to collection (which might be determined through the tendering process), and this may, in turn, depend upon the contract lifetime being considered.

From the perspective of the waste management system as a whole, b) has some added significance in that it clearly makes some sense to co-locate depots and treatment facilities as far as possible. This then reduces the need for double-handling of materials with potential additional savings to the authorities. We return to this point below.

The current situation in Hertfordshire is that the WCAs have depots in the following locations:

Table 1:- Hertfordshire WCA refuse depots

WCA	Depot Location
Broxbourne Borough Council	
Dacorum Borough Council	Cupid Green Depot, Hemel Hempstead
East Hertfordshire District Council	Buntingford Business Park, Buntingford
Hertsmere Borough Council	Cranbourne Industrial Estate, Potters Bar
North Hertfordshire District Council	Blackhorse Road, Letchworth
St. Albans District Council	Sandridge Gate Depot, St Albans
Stevenage Borough Council	London Road, Stevenage
Three Rivers District Council	Batchworth Depot, Rickmansworth ²
Watford Borough Council	Wiggenhall Depot, Watford
Welwyn Hatfield District Council	Tewin Road, Welwyn Hatfield

Whilst it may be that the above offers some rationale for WCAs partnering in the attempt to deliver additional efficiencies in their service delivery, many of the gains which can result from more formal arrangements for partnering could be gained from simply formalising joint working on specific issues. Essentially, this requires some legal agreement between authorities in those areas where they seek to work together, or procure services jointly.

Whatever form joint working might take, an important point for WCAs seeking to generate benefits related to joint working relates to the preparedness of the industry itself to respond to this type of challenge. Experience suggests that bidding teams on the industry side will respond to tenders in the manner data is presented to them. Hence, if 3 WCAs looking to procure services jointly present data to bidders as it would be from 3 separate WCAs, bidding teams will price their 'joint bid' as though it is a bid for contracts from 3 WCAs.

² Work is ongoing with Watford BC to investigate sharing depots.

Hence, data presentation needs to be considered carefully, and some prior work with prospective bid teams may be useful to help convey the key rationale for tendering jointly. Evidently, no efficiency gains will result if bidders simply price up three separate bids and add the figures together.

Finally, it may make sense for WCAs to come to some agreement regarding, for example:

- Common policies on side-waste;
- What are the key characteristics of a 'best system' for collection?;

Horizontal integration can help to achieve these ends.

3.1.2 Between WDA and WCAs

Closer partnering between WCAs and WDAs may be driven by a number of different considerations:

1. For the reasons discussed in Section 1.0, the nature of decisions to be made concerning local authority waste management is becoming more complex. Furthermore, the decisions are becoming such that the interests of the WDA and those of the WCAs are not always aligned, so that decisions which might otherwise lead to the best outcomes for Council tax payers might not always be taken because of the lack of coincidence of interest between WCAs and WDAs. A partnership can provide the obvious means through which some of these important issues are discussed and, hopefully, resolved. Furthermore, depending upon the nature of the partnership and the governance arrangements which are in place, partnering may speed up the decision making process. Many two-tier areas now recognise that one of their most precious resources is time. In the context of joint working, where time is increasingly limited, the speed of decision making processes becomes an important factor.
2. The issue of financial transfer between WCAs and the WDA has been discussed above. Another important issue is the nature of incentives put in place in different contracts, and the nature of the payment mechanism specified for the contract in question. This is of particular importance in the context of contracts for residual waste treatment, or treatment more generally. Experience elsewhere suggests that somewhat thoughtless contract specification, and ill-advised payment mechanisms, can have perverse effects on the incentives which this creates for the WCAs. Closer examination of the implications of these for the WCAs can ensure that perverse incentives are not put in place;
3. In the previous sub-section, the potential for generating savings from sharing of depots was discussed. It is worth considering what is happening to collection logistics in WDAs as they move from landfill-based disposal to treatment of residual waste through other means. In the former system, it was typically the case that landfills were in more rural locations and depots were close to more urban centres. The depots

and the disposal facilities were not co-located since landfills were rarely situated in locations suitable – from a logistical point of view - for use as depots. In future, the potential for co-locating depots and treatment points is likely to have a stronger rationale. From a crude perspective, WDAs might wish to see a relatively small number of locations for delivering material. WCAs might prefer locations to be close to them, suggesting larger numbers of locations. Arriving at a sensible and efficient configuration for all concerned is only likely to happen if the WDA and the WCAs work together.

3.1.3 Summary

It seems inevitable that in future, decisions will need to be made which are not – at least from the current standpoint – beneficial for all parties. Ultimately, in two-tier areas, one would like to be in a situation where the decision making process was framed by mutual self-interest. Correcting incentives may be one way of doing this. However, a number of issues are being raised in the current context which need careful consideration by the existing HWP. Rational agreement on these issues is likely to be difficult to achieve without some form of partnership working, but equally, more formal partnership arrangements might not be *necessary* as agreement can be achieved through other means, and in ways which give partners the desired level of comfort.

Possible partnering arrangements are considered in Section 3.3. Different options exist ranging from relatively informal arrangements to the most extreme example - a 'virtual authority', where a mechanism was used to pool budgets.

Much can be achieved without formal partnering arrangements through *ad hoc* contractual agreements (for example, around specific procurements). What partnering gives, however, is a forum for the discussion of key strategic issues, and the possibility for developing appropriate decision-making arrangements in line with agreed principles for the partnership.

3.2 Scope of Future Procurements

Within the UK, a number of lessons are being learned about procurement as time goes by. Some of these have been somewhat painful. Even in unitary authorities, the rationale for jointly procuring services for waste collection and waste treatment seems to be limited to reducing client side costs. The disadvantages seem to outweigh the advantages. Simply put, collection contracts rarely need to be of more than 7 years' duration. Contracts for treatment, however, are typically of 15-25 years' duration (and in the UK, they have tended to be at the upper end of this range for residual waste). This raises fairly fundamental questions as to the rationale for considering bundling both services into one contract, not least where market competition could not be said to be fierce, and where some of the potential bidders for collection contracts may be effectively excluded by the scope of the procurement.

Very simply put, the scope of procurements could relate to activities which are currently:

- a) the responsibility of one WCA (e.g. kerbside collections of refuse and recyclables);
- b) the responsibility of the WDA (e.g. residual waste treatment);
- c) the responsibility of more than one WCA (e.g. joint procurement of kerbside collection activities across more than one WCA);
- d) the responsibility of the WDA and all / some of the WCAs.

Different services could, of course, be bundled in different ways.

The rationale for partnering would seem to be strengthened where more than one WCA is involved (though as mentioned above the possibility exists for partnering on a more *ad hoc* basis). However, in some circumstances, partnering can present potential problems. In particular, if WCAs and the WDA seek to develop a partnership to develop an integrated contract (for collection and disposal), problems can occur if not all WCAs actually join the partnership. Some WCAs could seek to remain out of the partnership, and the contract, seeking to gain financially from their omission from the partnership. This would be most likely to occur if:

- The partnership was seeking to deliver high recycling rates;
- The WCA in question had low statutory targets to meet;
- The WCA had, as a result, low collection costs;
- The WDA had no recourse to make the WCA join the partnership, for example, through specifying an alternative to recycling credits which implied incentives for the WCAs concerned to join the partnership. In this case, a WCA could effectively hold the partnership to ransom by seeking 'to be directed' and being compensated by the WDA as necessary; and
- The bids from tenderers failed to demonstrate any advantages of joint contracting relative to a situation in which each authority let a separate contract.

In such circumstances, an integrated contract (for treatment and disposal) may pose particular challenges, but as mentioned above, there may be good reasons why such integrated contracts have, in any case, little to recommend them.

3.3 Options for Legal Forms

Partnership can take a number of forms. One might refer to different 'constitutional arrangements' for a Partnership Board (PB). This somewhat loose term covers the development of an agreed basis for the implementation of any PB, including its formalisation through some form of legal agreement. It also inevitably strays into the realm of operational and procurement planning, as both of these areas will help to determine the right approach to the institutional arrangements and structures that will be required. The following sections provide an introduction to the issues that ought to be considered, beginning

with structural options and key areas where decisions would need to be made and then considering some of the most important issues in isolation.

3.3.1 Structural Options

There are a number of increasingly well tested approaches to structuring the governance of partnership arrangements between authorities, some of which the HWP authorities will already have experience of. The following tables outline the features, advantages and disadvantages of these options.

Table 2 - Partnership Board

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ Designed to fulfil a specific contractual need ➤ Composition of board determined by the contractual documentation as in its operation, influence and duration 	<ul style="list-style-type: none"> ➤ Tailored solution ➤ No corporate entity ➤ Local authority member/officers do not take on additional legal responsibilities ➤ Procedures not prescribed ➤ Public sector audit regime ➤ More recognisable by and more affinity with members 	<ul style="list-style-type: none"> ➤ Time limited ➤ Remit cannot be easily expanded ➤ Opaque accountability ➤ No independent supervision ➤ Opaque contractual role ➤ No corporate entity to be able to contract or own property in own name ➤ Cannot be delegated functions

Table 3 - Joint Committee

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ A formal local authority committee constructed under Section 101 of the Local Government Act 1972. ➤ Policy determined by local authority councillors for the purpose determined/ delegated by the principal authorities ➤ Managed by designated officers 	<ul style="list-style-type: none"> ➤ Established arrangement ➤ Legal promoters well known and understood ➤ Potentially open accountability ➤ Members/ officers do not take on additional responsibilities ➤ Procedures prescribed in local government law ➤ Public sector ethics / audit regime ➤ Can be delegated functions 	<ul style="list-style-type: none"> ➤ Can be bureaucratic ➤ May not promote "difference" in approach ➤ Cannot directly employ staff (must be through lead authority route) ➤ External organizations cannot vote ➤ Not a separate corporate entity able to contract or own property ➤ Continued scrutiny arrangements linked to originating authorities

Table 4 - Non-Profit Distributing Organisation

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ A separate entity from participating local authorities - can be established under various Acts. ➤ Composition and purpose set out in memorandum and articles of association or similar 	<ul style="list-style-type: none"> ➤ Distinct legal status ➤ Tailored solution ➤ Permanence ➤ Private sector accountability and audit regime ➤ Retained earnings used for agreed objectives ➤ Can contract and own property and raise debt finance ➤ Can achieve 'off balance sheet' treatment 	<ul style="list-style-type: none"> ➤ Potential exposure to taxation ➤ Conflict of interest issues need to be monitored ➤ Independently monitored ➤ Regulated by Companies Acts, Industrial and Provident Societies Acts and Insolvency Acts ➤ Cannot raise finance through "issues" (by itself) - only debt

Table 5 - For Profit Entity e.g. Company Limited by Shares

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ As for not-for-profit but dividends payable ➤ The normal preferred structure if profits are a motivator and/or private sector involved 	<ul style="list-style-type: none"> ➤ Familiar to the private sector ➤ Distinct legal status ➤ Tailored solution ➤ Permanence ➤ Private sector accountability and audit regime ➤ Recognisable vehicle for raising finance (for types of finance other than debt) ➤ Shares are a recognizable, transferable interest 	<ul style="list-style-type: none"> ➤ Potential exposure to taxation ➤ Conflict of interest issues need to be monitored ➤ Independently monitored ➤ Cannot be used as a charitable entity ➤ Company filing requirements

The choice of structure will obviously be influenced by the procurement strategy and the preferred approach to operational management. Some conclusions on these options might be:

- The Partnership Board (Table 1) is least likely to be suitable if integration of client operations is being pursued;
- The Joint Committee (Table 2) is likely to be the structure with which local authorities are most familiar. It is capable of having functions delegated to it, but carries the disadvantage of not being a separate entity from the partner authorities.
- The Non-profit Distributing Organisation (Table 3) is increasingly being used as the vehicle for partnership working between authorities. The utilisation of a Company type structure potentially allows the limitations of the Joint Committee to be minimised, but brings with it the risk of increased fiscal exposure and complication (especially VAT and Corporation Tax)³.

³ A new 'Community Interest Company' form is currently being considered with local authorities in mind, but this will not offer any fiscal advantages over existing structures

- For Profit Entities (Table 4) are perhaps the most obvious vehicles for joint ventures with the private sector, but are also most clearly exposed to potentially unnecessary tax liabilities.

Unsurprisingly, none of these structural options are ideal in every way.

Two further potential options are worthy of note, which may offer the best of the Joint Committee and Non-profit Distributing Organisation options without the downsides. These are:

- the Joint Board; and
- the recently created Limited Liability Partnership.

The Joint Board was envisaged within the discussion of new powers to facilitate partnership working under section 16 of the LGA 1999. As envisaged by Government, Joint Boards would have a number of interesting features:

1. They could be established by two or more Best Value authorities;
2. They would operate essentially as quasi-local authorities with separate accounts;
3. They could be empowered to hold assets, employ staff (who remain essentially public sector employees) and borrow money; and
4. Authorities could delegate functions to such Boards.

Such joint boards are used already as the structures for various forms of single purpose authorities and special purpose entities by collaborating local authorities and other public bodies, but have always been set up through specific statutory intervention. The Government's intention is to legislate for a general power to create Joint Boards to be given to local authorities, but this is proving difficult, apparently for legal reasons.

The Limited Liability Partnership is a new innovation⁴ in (primarily) commercial organisational structure, allowing a collection of individuals or organisations to form a legal partnership which has limited liability in the same way as a limited company, as opposed to the 'unlimited personal liability' that partners in, for example, professional firms were previously exposed to. The key advantages of the Limited Liability Partnership from the perspective of local authorities working together are the fact that partners are not exposed to Corporation Tax and should be able to account for VAT as individual authorities. Essentially, the Limited Liability Partnership would be a legal entity that had powers to, for example, open bank accounts and employ staff, but would not exist in law as a separate 'person' in the way a company does, potentially allowing the partner authorities to avoid exposure to fiscal penalties associated with company structures.

⁴ Following the Limited Liability Partnerships Act 2000

3.3.2 Summary Regarding Structures

The appropriate structure will be determined by various factors and no particular option can be recommended without understanding of the goals of any partnering arrangement. The choice of legal form is obviously crucial and all other issues need to be considered in the context of what can be legally done by different types of managing body. The key questions of principle that need to be considered by would-be partners at an early stage are:

- What degree of legal autonomy from the partner authorities is envisaged for the PB? and
- What are the issues around the possibility of one partner authority taking a 'lead authority' role (since this is effectively necessary in some of the above forms)?

3.4 Key Areas of Decision on the Constitutional Agreement

Whatever legal form is adopted for any partnership, many issues will need to be considered before authorities are in a position to sign up to any final agreement. The key areas for discussion include:

- The duration of the arrangements; potentially left undefined, provided provisions are made for the withdrawal or addition of partners and the ending of the arrangements;
- The extent of the activities of the arrangements; essentially, the functions that are to be discharged by the PB on behalf of the partner authorities;
- What will be the membership of the PB and what procedural requirements will be needed (meetings, quorum, voting rights etc)?
- The extent to which each authority is to contribute financial and other resources, any valuation issues and, most importantly, the mechanism for defining contributions to the partnership;
- The funding of any increased costs, losses or shortfalls and the mechanisms for managing these, as well as for dealing with surpluses, under-spends and savings;
- How employment issues, especially TUPE, will be dealt with during the migration to the new arrangements;
- The levels of service to be provided and any differences between the authorities, how the levels of service will be determined and managed and the extent of any planned change;
- How the PB will be accountable to each of the authorities and how decisions will be made (i.e. by simple majority, or are there important issues requiring unanimity or special majorities?);

- Any provision to be made for the withdrawal of one (or more) authorities, including arrangements to be made *re* outstanding liabilities to be met by the withdrawing authority;
- How any deadlock between the authorities will be resolved, whether any authority should be able to terminate the arrangements before their expiry and, if so, on what grounds (and the arrangements that should apply on termination of the pre-existing ones).

3.5 Political Composition

Perhaps the most fundamental question to be answered relates to the rules governing the political composition of any PB. In many informal partnerships between tiers, it is not unusual for the County to have a larger share than any of the WCAs, sometimes reflecting a disparity in resourcing provided. However, in formalised, executive partnerships this is often seen as inappropriate, even if (as may or may not be the case in Hertfordshire) the County were to provide a larger share of the funding to a pooled budget.

The most successful inter-tier partnerships arguably have to be based on the principle of equality and buy-in to the concept of mutual advantage through collaboration. There have also been several high profile examples of partnership failure as a result of perceived over-dominance of the County partner. We would generally recommend, therefore, as a starting point, that in any partnership, the partners agree upon the importance – the primacy - of equality and suggest that the partnership would be constituted of, for example, two members from each of the participating authorities. It may also be useful to engage a partnership officer, who could be independent of either the WDA or any WCA, so as to make explicit the fact that all partners are being considered as equals in the developing process.