



Improvement Service  
Improving Partnership Performance  
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## **Workshop D – Alternatives to the Traditional Partnership Model**

### **LEGAL ISSUES & FRAMEWORKS**

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# Alternatives to the traditional partnership model

## “Partnerships Plus” – Legal issues & frameworks

- **Report** – *Community Planning: legal issues & frameworks*
- **Key legal challenges** raised by more robust partnership structures
- **Legal frameworks for partnership working** (assuming joint delivery by two or more public sector bodies) – 3 models



## Report – *Community Planning: legal issues & frameworks*

- **Background**
- **Contents:**
  - Legal barriers/constraints
  - Legal frameworks at the level of the CPP
  - Models for joint delivery
  - Models for community engagement
  - Local community planning structures
- **Next steps...**



# Legal challenges raised by more robust partnership structures

## Legal barriers/constraints

- **vires** (ie legal capacity) – whether a given public sector body can validly take decisions (through participation in a partnership board or similar) in relation to matters which fall outwith its own statutory remit.
- **power to delegate** – whether a given public sector body can validly delegate decision-making power to a decision-making organ within a partnership structure, where that form of delegation is not specifically provided for in the legislation which governs that body



## Legal challenges raised by more robust partnership structures (cont.)

### Legal barriers/constraints (cont.)

- **fettering of discretion** – whether a given public sector body, in deferring to the decisions of a partnership board (or other decision-making organ within a partnership structure), falls foul of the principle that a statutory authority must not surrender the ability to exercise its own judgement
- **accountability for public funds** – whether arrangements which allow a partnership to make decisions in relation to allocation of certain funding streams, and to have the role of monitoring use of funds, can be fully reconciled with traditional approaches to the issue of accountability



# Legal frameworks for partnership working

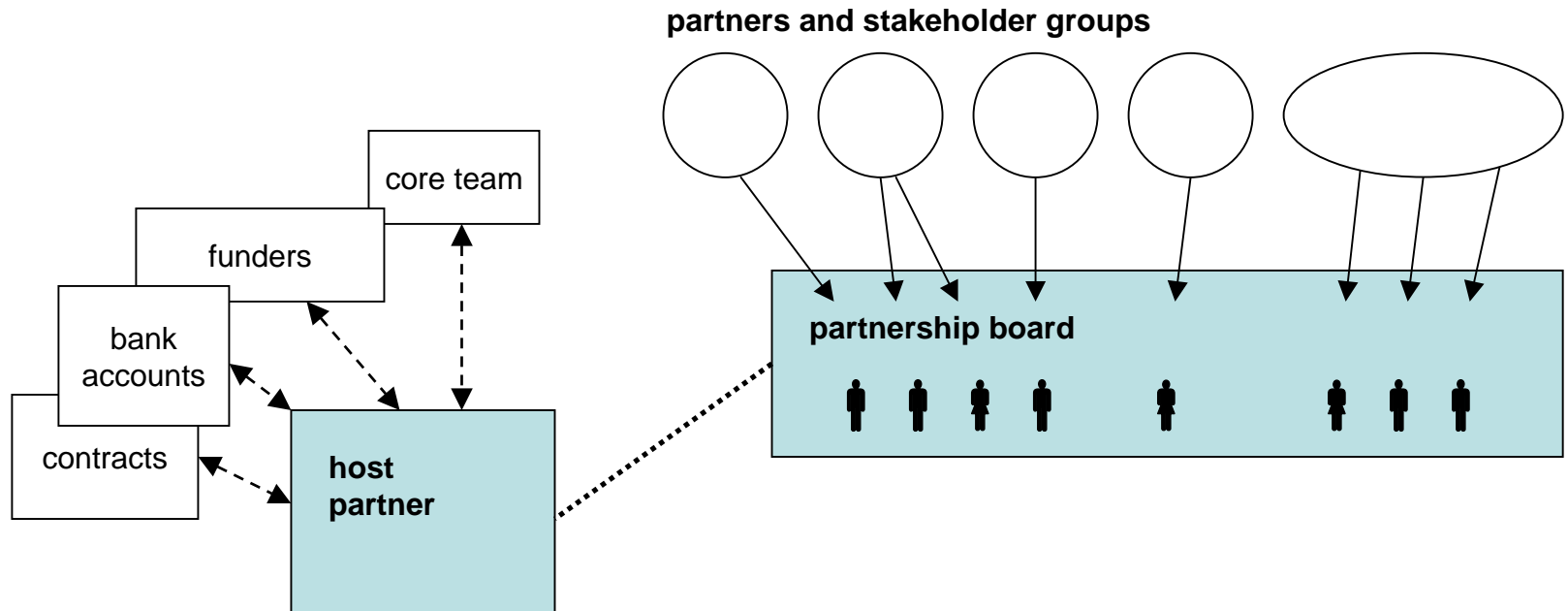
**Legal frameworks (assuming two or more public sector bodies engaged in joint delivery of services)**

Three main models:

- **Model 1 - Unincorporated partnership**
- **Model 2 – Corporate body**
- **Model 3 – Partnership board, using dedicated corporate body for core work**



# Model 1 – Unincorporated partnership model



# Model 1 – Unincorporated partnership model (cont.)

## Advantages:

- Avoids the formality of a corporate body
- Less sensitivities as regards displacing role of partner bodies
- Rules relating to partnership board etc can be looser than those for a corporate body
- No need for the separate infrastructure required for a corporate body (though at a practical level, will still need to be serviced in similar ways)
- May appear to raise less in the way of legal concerns round *vires* etc than a corporate body



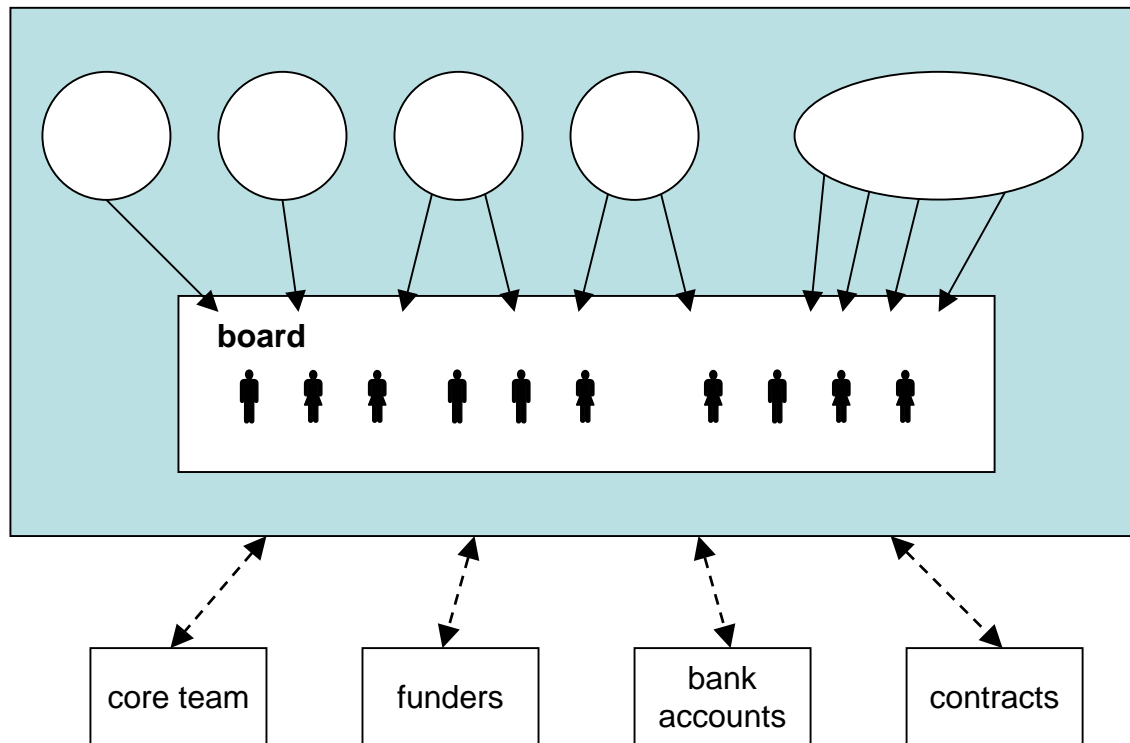
## Model 1 – Unincorporated partnership model (cont.)

### Disadvantages:

- Obligation of the host partner to enter into contracts, implement spending decisions, issue instructions to staff etc may have to be qualified to allow host partner to mitigate its risk exposure
- The need to channel external legal interactions through the host partner may distort the dynamic of decision-making
- Greater risk that one or more partner bodies will treat the partnership as no more than a discussion forum
- Involves unlimited exposure of host partner to the legal liabilities associated with the work of the partnership
- Use of this model for partnerships involving two or more host organisations raises significant legal complications, even where appropriate schemes of delegation etc are put in place.



# Model 2 – Corporate body



## Model 2 – Corporate body (cont.)

### Advantages:

- Separate legal entity clarifies legal relationships; joint corporate body is clearly seen as employer, fundholder, contracting party etc
- Direct connection between decisions of the board and implementation by core staff – so better governance
- Possible distortions in balance of power and/or external perceptions associated with the host partner role under model 1 will not apply
- Sharing of risk will automatically apply in relation to all legal relationships entered into via the corporate body
- Legal principles should help to produce a true partnership ethos in decision-making, with individual agendas subordinated to the common mission



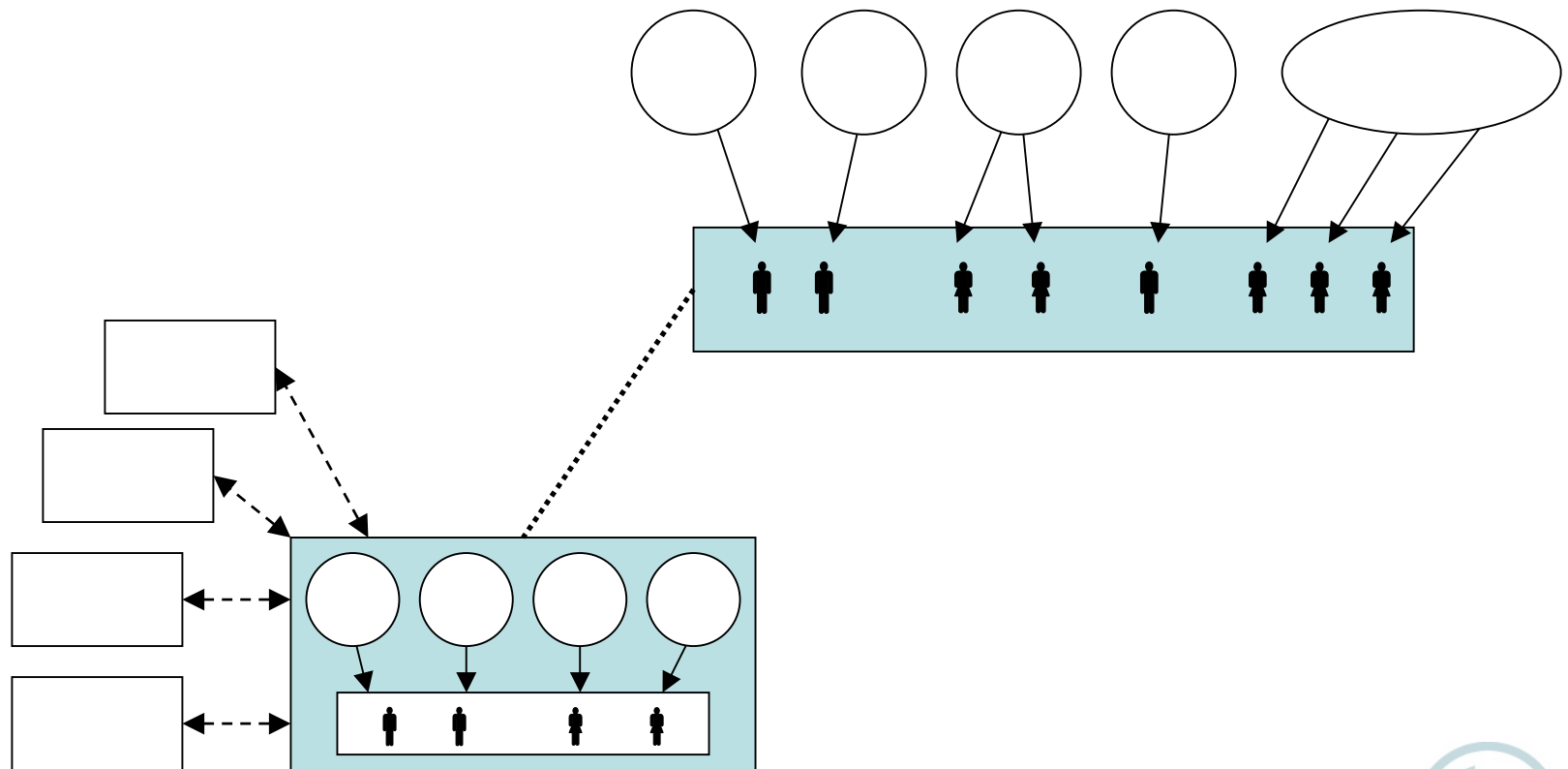
## Model 2 – Corporate body (cont.)

### Disadvantages:

- Increased formality may be off-putting (and possibly seen as threatening in relation to their own role) for certain partner bodies
- May be a greater risk that corporate body will be used solely to deal with core work, and that partner bodies will not follow the wider strategy in relation to their own respective areas of work
- The need to identify specifically those serving as directors from time to time (in a company structure) may inhibit more informal input/interaction as compared with membership of a partnership board (*though concerns of that kind can be addressed through other structures eg consultative groups*)



# Model 3 - Partnership board, using dedicated corporate body for core work



## Model 3 – Partnership board, using dedicated corporate body (cont.)

### Advantages:

- Preserves the softer feel of an informal partnership in relation to areas where wider engagement is appropriate
- Avoids the stresses and strains of a host partner approach
- Creates a clear legal entity to act as the vehicle for funding applications for joint work, and to enter into other legal relationships at the behest of the Partnership Board (*where these tasks are not carried out by individual partners*)
- May be seen as less threatening to existing players than model 2, since the role of the corporate vehicle is limited



## Model 3 – Partnership board, using dedicated corporate body (cont.)

### Disadvantages:

- More complicated than either model 1 or model 2 – since it requires both a Partnership Agreement and a corporate vehicle
- Selection of the “core” partner bodies to act as members of the company may create tensions
- Objects of the corporate body (assuming it is a company) need to be carefully tailored so as to focus on its role as supporting the overall partnership, to minimise the risk that those serving on the Partnership Board might be deemed to be directors or shadow directors

# **“Partnerships Plus”: Legal issues & frameworks**

## **Key messages:**

- **Fudging the legal issues in partnership working (esp. partnerships for joint service delivery) is high risk; there are real legal hazards**
- **Moving to more robust structures may raise technical considerations, but better to address these than leave areas of uncertainty**
- **The use of a joint corporate body will often significantly increase clarity in legal relationships, improve accountability, strengthen governance, create more effective partnership ethos**
- **Legal structures – whether involving corporate bodies or not – need to be carefully tailored, with proper appraisal of the pros and cons of each option**

