

Big Local partnerships becoming, or setting up, their own locally trusted organisation

Introduction

Who should read this guidance?

This guidance is for Big Local partnerships that are thinking about setting up their partnership as a legal body and becoming their own locally trusted organisation (LTO), meaning the organisation acts as both the partnership and LTO. It also covers situations where a partnership sets up a legal body to become an LTO, but the partnership continues in existence as a separate and independent decision-making body. This is also for anyone that Big Local partnerships ask to support them with, for instance, legal and financial issues, so they can understand what might be especially important to consider and why. This guidance should be read alongside the guidance on [setting up a new legal body](#) as well as the core guidance on [locally trusted organisations](#) and [partnerships](#).

What is the guidance about?

We know that some Big Local partnerships have already become or are interested in becoming a legal body so they can become their own LTO. This means that a single organisation develops the Big Local plan and makes decisions on funding, as well as having responsibility for holding and distributing the money and entering into a grant agreement with Local Trust. We also know that some other partnerships have already set up or are interested in setting up a separate legal body to become the LTO but want the partnership to also continue as a separate decision-making body.

If you are considering either of these two routes, we have set out below how we approach this, our requirements and some of the things you will need to think about and do.

Legal form, identity and structure

If your **partnership chooses to set up a separate legal body to become the LTO**, then this new legal body will enter into the funding agreement with Local Trust and

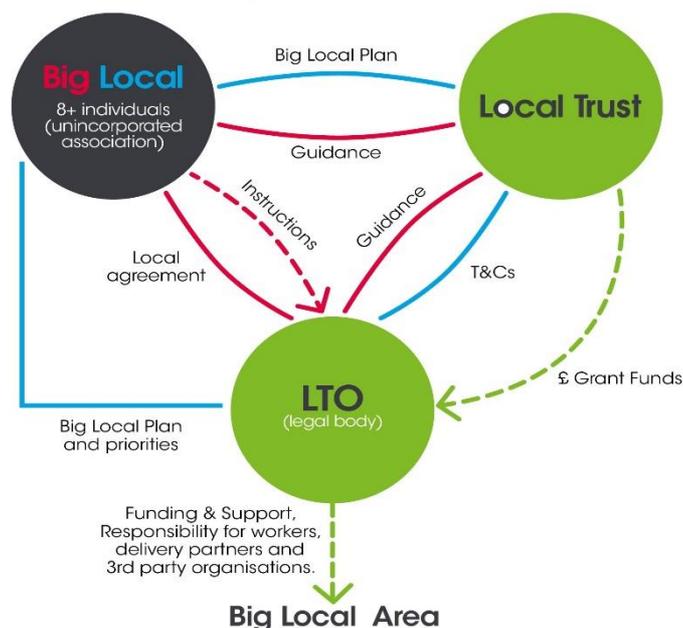
become the legal grant-holder with a funding agreement and terms and conditions of grant. If your **partnership chooses to become its own LTO**, then it will need to become a legal body and enter into a funding agreement with Local Trust. Becoming your own LTO will change the relationship your partnership has with Local Trust. Instead of being an informal or 'unincorporated' partnership, you will become the legal grant-holder with a funding agreement and terms and conditions of grant. The role of the partnership members, including their legal responsibilities, is also likely to change depending on how you structure the organisation.

As the LTO you will be legally and financially responsible for Big Local in your area and it will be your responsibility to manage, monitor and report on the funding in line with your Big Local plan. This will include carrying out due diligence checks on and putting funding agreements in place with other organisations, groups and individuals to deliver projects, activities and services. It will also mean you need to have the right policies and procedures in place to deliver Big Local safely and effectively, including but not limited to safeguarding, employment, HR, insurances and health and safety. You might also agree to directly deliver some of the projects, activities and services in your plan.

You can find our guidance about setting up a legal body [here](#). This includes more detail on the different legal duties and responsibilities a new organisation would have.

The diagrams below show how the nature of the funding relationship with Local Trust changes when a partnership becomes its own LTO.

Original structure and structure where a partnership sets up a separate legal body to become LTO:



Structure where partnership becomes own LTO:



Essential – things you will need to do

Due diligence requirements

We carry out checks on each LTO that we fund on behalf of Big Local areas. You can find more information in our guidance on [locally trusted organisations](#).

From March 2021 we will require all newly incorporated legal bodies set up by a Big Local partnership to be successfully registered with the appropriate Regulator (i.e. Charity Commission, Companies House, Office of the Regulator of Community Interest Companies, and/or Financial Conduct Authority, as is relevant to the legal body selected).

We recognise that in either setting up your Big Local partnership as an LTO or setting up a separate legal body as an LTO you won't necessarily have a financial history or audited accounts. As reviewing these is normally part of our due diligence assessment, we will instead ask for a copy of your financial policies and procedures, a business plan, projected cash-flow and details of the skills and experience of the people managing the finances and those providing oversight. If you are new to managing funds, then we may start by funding smaller amounts and increase this over time as your capacity grows or, if appropriate, we may ask you to start with a dual LTO approach where you work alongside another experienced organisation, each responsible for different areas of the plan, to learn and become more confident in the role.

Funding agreements and Rep support

We provide LTOs with a contribution towards their role in administering the grant – which is 5% of the total spend. This is in addition to the £1.2m for each Big Local area. It only becomes available once we endorse your Big Local plan. It is released as a proportionate amount with each payment. At the end of a grant, if there is an

underspend, we also add the 5% on to the amount to be returned. It doesn't feature in the partnership's spend reports and doesn't need to be reported on to us. You can refer to the [LTO guidance](#) for more information. As for all LTOs if your partnership becomes its own LTO, or you set up a separate legal body as LTO, we will pay this 5% LTO contribution to your organisation and as usual funding details will be set out in the offer letter from Local Trust. The support of your Big Local Rep will also continue.

Employing and transferring staff

If you employ Big Local staff on behalf of the partnership, you will need to negotiate on-costs (e.g. pension, national insurance etc.) so that you cover your own costs. You may also need to think about budgeting for any redundancy costs needed. You can refer to the Big Local guidance on [workers and Big Local](#) and appropriate government guidance on [employing people](#) for more information, including expectations around HR, health and safety and working conditions

In becoming your own LTO, or setting up a separate legal body as LTO, you may decide to transfer the employment of Big Local staff from the previous LTO. These employees may be protected under the Transfer of Undertakings (Protection of Employment) regulations (often referred to as TUPE). You can find out more about TUPE regulations [here](#). It can be a complex area and it will be important for you to seek relevant professional advice.

Under TUPE, the new employer takes over employees' employment contracts, including:

- all the previous terms and conditions of employment
- any failures of the previous employer to observe employees' rights (so employees could make a claim for discrimination against the new employer, even if it took place before the transfer)
- [holiday entitlement](#)
- period of [continuous employment](#) - an employee's start date is the same as before the transfer, so continuous employment isn't broken. The length of continuous employment gives certain rights to employees, including maternity pay, flexible working requests and redundancy pay
- any collective agreements previously made.

Membership and remit

Where a partnership becomes, or sets up, a stand-alone organisation as the LTO, you may decide that the organisation has a wider remit and membership than just the Big Local area. Where that is the case we will need reassurances that Big Local funds are directed to, and for the benefit of, the Big Local area and that decisions around the use of Big Local funds are still resident-led, as set out in our [partnerships guidance](#).

Because our due diligence checks normally include checking the capacity of the LTO to support the partnership, when the two are the same we will expect you to:

- meet your own obligations as an organisation and act in accordance with the law, for example, where you set up a charity, ensuring you comply with charity law and that you report in line with Charity Commission and/or Companies House rules
- meet the obligations of [being an LTO](#), as set out in the terms and conditions of funding, which includes reporting back to us on spend and treating Big Local funding as restricted in your organisation's accounts
- fulfil the [criteria of a partnership](#) including a minimum number of residents, and having measures in place to ensure appropriate standards of behaviour;
- have a transparent Conflict of Interest policy and Code of Conduct which takes into account the new structure
- ensure that Big Local funds are directed to, and for the benefit of, the Big Local area only and that decisions around the use of Big Local funds are still resident led, as defined in the partnership criteria.

These things will need to be set out in your organisation's governing document, and we will review these during assessment when we make the decision to offer funding.

Conflicts of interest

Conflicts of interest are important to understand and get right from the start. Many problems and conflicts we have seen over the course of the programme can be linked back to not paying enough attention to this area. In many cases conflicts within or between groups can be managed effectively with openness, transparency and the right policies and procedures. Conflicts of interest should be identified and declared, you should act to prevent the conflict of interest from affecting decisions and record the conflict of interest and how it was dealt with.

When a partnership and LTO are the same body

In setting up your partnership as its own LTO the partnership and the new legal body will become the same. This will mean that all or some members of the current Big Local partnership will become members of the governing body (directors or trustees) of the new legal body and the partnership will cease to exist as a separate entity. When this is the case conflicts of interest do not apply in the same way as when the LTO and partnership are separate bodies. However, conflicts of interest may arise, because the same individuals make decisions on the delivery of the Big Local plan, whilst also acting as the directors or trustees of the new organisation who have a responsibility to act in the best interests of that organisation. Whilst there would not be a requirement to have a conflict of interest policy that covers making decisions on the Big Local plan and funding, there would still need to be a policy in place that covers, for example, conflicts between the LTO organisation and any external organisations that might deliver work with Big Local funding and we would still see the following as unacceptable conflicts of interest:

- members of the governing body being related by birth or marriage or other close relationship that may adversely influence, or reasonably be perceived by the wider public to influence, decision making
- paid workers being a member of the governing body
- conflicts of interest which are not declared or managed, especially in making funding decisions that could benefit individuals on the governing body of the LTO
- decision making processes which are not transparent.

When a partnership sets up a separate body to become an LTO

When a partnership sets up a separate organisation to become an LTO and there is a crossover of membership between the partnership and new LTO but both bodies still exist, different conflicts of interest requirements apply. We understand that working in a local area means that the same people may be active and involved in different projects and organisations. In this scenario, we also understand that this means some partnership members may want to be a part of the new LTO that has been created. Some crossover in membership is acceptable, however we would see the following as creating an unacceptable risk of conflicts of interest arising:

- an identical set of individuals being members of the partnership and trustees / directors of the LTO or someone having a position of power or influence on both groups
- members of either group being related by birth, marriage or other close relationship that may adversely influence, or reasonably be perceived by the wider public to influence, decision making
- paid workers being a member of the partnership
- conflicts of interest which are not declared or managed, especially in making funding decisions that could benefit individuals on the Big Local partnership and / or LTO
- decision making processes which are not transparent.

General considerations

In becoming its own LTO, or setting up a separate organisation to become the LTO, your partnership will need to consider:

- how you operate in line with the values and ethos of Big Local as both a partnership and LTO
- where they are different, how the new legal body and the partnership are structured to minimise potential conflicts of interest and you will need to put in place suitable processes to manage conflicts of interest where these do arise
- how decisions will be made in a transparent way and how you will show that they are supported by the people in the Big Local area.

Whilst agreeing the local structure and associated roles is important you will also want to ensure this is formally agreed and signed off. We will ask for details of your

structure, and the process you went through to decide on it, to help us understand this relationship clearly.

Helpful things to think about

As you think about and discuss becoming your own LTO, or setting up a separate organisation to become the LTO, it will be useful to work through the guidance on [setting up a new legal body](#) and also be clear on the requirements for [LTOs](#) and [partnerships](#). Some further things you will need to think about are:

Governance

- Where the Big Local partnership and new LTO it sets up are to be kept separate:
 - How will you ensure that the directors / trustees of the new organisation and the members of the Big Local partnership are not identical to avoid conflicts of interest?
 - What will be the distinctions between the partnership and the LTO? What are the roles of each and what is the relationship between the two?
 - How will the governing documents for the new organisation relate to the documents about how the Big Local partnership operates?
 - How will the existing Big Local partnership interact with the legal entity? Think about the relationships locally, agreeing roles and how they will interact as well as being clear what the delivery role of the legal entity is.
 - Where will the responsibility for employing and managing staff sit?
- Where the Big Local partnership and the new LTO it sets up will be the same legal body:
 - Will you move all the members of the Big Local partnership onto the board of the new LTO and disband the partnership in favour of a single decision-making and implementing body? (If not, the partnership and the LTO will be kept separate and the considerations listed under bullet point above become relevant to you).
 - In addition to the original partnership members, who else may need to be appointed to the board with the skills to support the LTO-related activities? (See more on this in the 'Skills' paragraph below).
 - If you would like the partnership members and the trustees to be a different set of individuals but all within the same legal body rather than being separated into a different LTO and partnership, you could consider creating a committee of the board where the current members of the partnership would transfer.

- How will you continue to involve other local people in Big Local and ensure resident-led decision making which is open to the wider community?
- Think about any barriers for residents who don't want to / can't be a trustee or director but still want to be involved and how you will engage them.
- Consider what type of legal structure you want and whether it will be a charity.

Skills

- An LTO will need different expertise round the table than the partnership. Do you have the right mix of skills and expertise? Are there any gaps and what steps will you take to address these? Are there gaps that could be filled by non-voting external advisors?
- What specialist support and advice might you need to seek as you think about and become, or set up, your own LTO?

Planning

- Do you have the right procedures and processes in place to become an LTO? This includes but it is not limited to financial processes, reporting to Local Trust and any regulator (the Charity Commission, for example), a complaints procedure, safeguarding, health and safety, staffing and HR policies and insurance.
- Have you considered a handover process and period from the previous LTO? This includes but it is not limited to transfer of staff, project information, contacts and files.
- How can people within the Big Local area have oversight of the partnership and, where they are the same body, the LTO? How might the relationship be perceived locally and how you will address this?
- If you own or are planning to purchase any assets with Big Local funds, then how will these assets be best protected and how will you ensure that the community of the Big Local area will continue to benefit from these in the future?
- As your partnership thinks about becoming, or setting up, its own LTO you may find it useful to speak to other organisations in the Big Local 'family' that already perform the LTO role.

Useful websites and resources for further information

Charity Commission	Managing conflicts of interest in a charity: https://www.gov.uk/guidance/managing-conflicts-of-interest-in-a-charity
Gov UK	Employing people guidance: https://www.gov.uk/browse/employing-people
NCVO Knowhow	Practical tools and resources for use in the voluntary sector, such as business planning, strategy and risk management: https://knowhow.ncvo.org.uk/tools-resources NCVO has a useful guide to Writing Your Business Plan, along with a template, here: https://knowhow.ncvo.org.uk/tools-resources/business-plan-template/writing-your-business-plan/writing-your-business-plan#
ACAS (the Advisory, Conciliation and Arbitration Service)	Handling TUPE transfers: https://archive.acas.org.uk/media/4012/Handling-TUPE-transfers-The-Acas-guide/pdf/Handling-TUPE-Transfers-The-Acas-Guide.pdf

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This document will be developed over time with input from the people using this material. If you have thoughts on how this document can be made more useful for you, particularly if you live in one of the Big Local areas, please let us know.

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If you need this document in other formats or a community language please get in touch with Local Trust and we will help you.

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