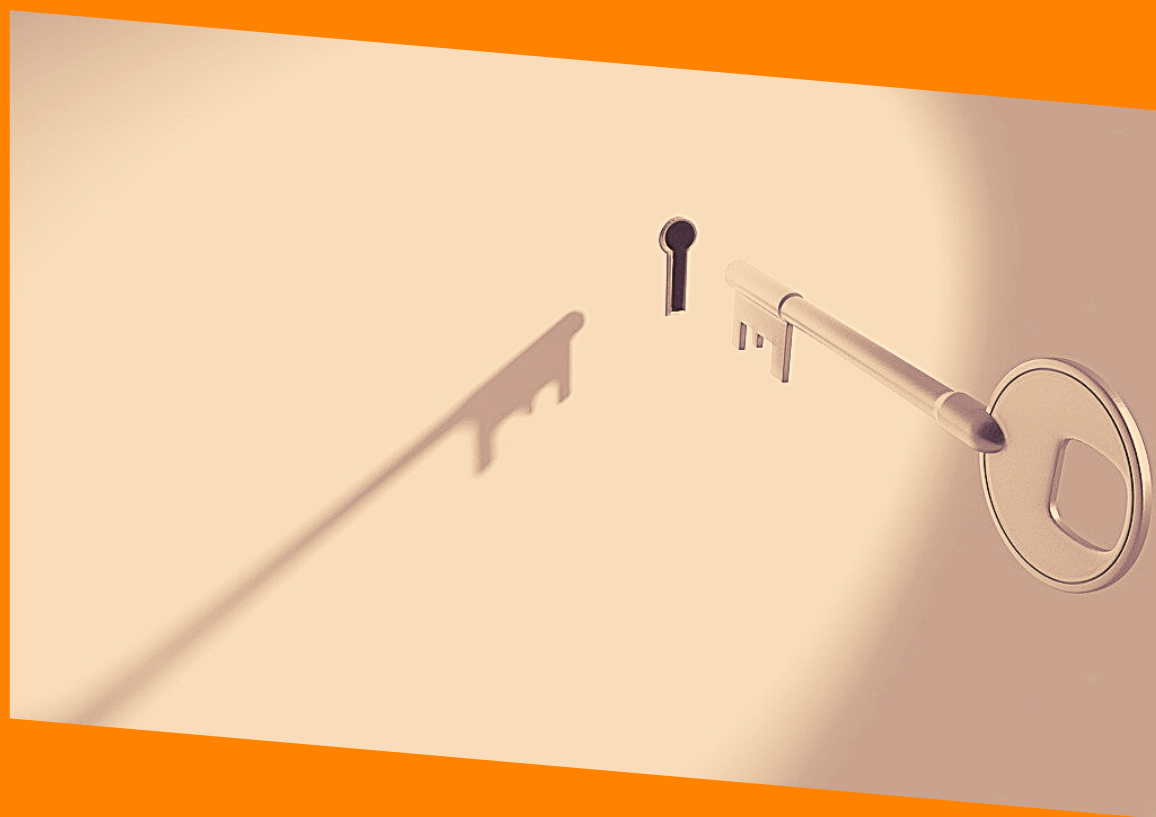


Benevolent funds and their professional associations

Seizing opportunities and mitigating risks

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Foreword

A strong collaborative relationship between a charity which exists solely to support individual members of a particular occupation through periods of hardship (a benevolent fund or "BF") and a professional association for members of the same occupation (a "PA") can bring benefits to both bodies. It is also the case, however, that the charity needs to retain its independence of the PA in order to focus exclusively on its own charitable objects and to avoid the diversion of its resources into other activities.

As there appeared to be no published research into these issues across the occupational fund sector as a whole, and given the Charity Commission's publication last year of its guidance on "*Charities with a connection to a non-charity*", I decided to undertake a short piece of research myself.

I have benefited from discussions with individuals from a range of BFs, both by size and by type of occupation, both trustees and staff. Sometimes they echoed my own experiences and opinions developed over my quarter-century working for multiple BFs. On other occasions, their experiences were different to mine and sent me further on the research journey. I also looked at publicly available information published by 24 occupational BFs to get a better feel for their how they operate. Even within this small sample, the variety of existing practices is striking.

Shortly after I started this research, the COVID-19 pandemic hit the UK. It is heart-warming to see how many BFs, often in collaboration with their PA, quickly stepped up to the plate and established emergency funds to help individuals struggling with the wider economic impact of the pandemic. The importance of charities whose purposes are to assist individuals through hard times and of ensuring that they have adequate resources to do this effectively has seldom been so manifest.

My thanks go to all the charity representatives who gave me their time and provided valuable insights and information in such an open way, to Andrew Studd of Russell-Cooke Solicitors and Mark Burnett of data protection advisers Hope & May for their expert advice and, of course, to the Association of Charitable Organisations (ACO) for its support in this project, particularly in introducing me to a number of individuals working within relevant ACO member charities and for agreeing to publish this article.

Caroline Aldred, November 2020

Introduction

This guidance considers how the relationship between a BF and its associated PA (or PAs) might best be constructed to the mutual benefit of both parties.

The PA may be a professional association supporting the occupation and people working in it. It may also be a regulatory body for the profession or a trade union. Some of these organisations may themselves be registered charities, albeit with different charitable objects to the BF.

The BF should manage this relationship to best achieve its charitable objects, which are mostly, and often exclusively, related to relieving poverty amongst members of the PA. The BF must ensure that it uses its charitable resources exclusively in furtherance of these objects. It must also comply fully with all other charity law and Charity Commission requirements.

To be sure of achieving this, the BF must maintain its independence of the PA. At the same time, particularly if the BF is not itself well-resourced, it will want to take advantage of the assistance and support the PA is able to offer it. Herein lies the conundrum which these charities have to wrestle with.



Charity Commission guidance on working with a non-charity

Although the Charity Commission's guidance (published in 2019) on "*Charities with a connection to a non-charity*" (See www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity) does not explicitly mention occupational BFs, it applies to BFs linked to a non-charity PA if:

1. the BF has been set up by the PA;
2. it receives regular funding or other support from the PA;
3. it works regularly with the PA to deliver services; and/or
4. the PA is the sole trustee of the BF or has the right to appoint trustees to the BF.

(See the "Who this guidance is for?" section of the Charity Commission's guidance.)

This seems to cover most, if not all, occupational funds linked to a non-charity professional association.

The Charity Commission points out in its guidance that a charity can benefit from close links to a non-charity. For example, the latter may be an important source of funding or of other resources which save the charity money. Additionally, working with the non-charity may help strengthen the reach and impact of the charity's work or help the charity to manage risks.

However, the Charity Commission also notes that a charity's collaboration with a non-charity must always be exclusively in furtherance of its charitable purposes and fully in compliance with the trustees' legal duties. While the connection between the charity and the non-charity offers opportunities and benefits to both, there are also risks to the charity which need careful management. These include the risks that:

1. the charity carries out activities which are outside its charitable objects;
2. the charity fails to comply with charity law;
3. the charity is inappropriately controlled or influenced by the non-charity;
4. the charity provides inappropriate support to or investment in the non-charity; and
5. donors to the charity find it difficult to distinguish between the charity and the non-charity.

Where the PA is itself a registered charity, as is sometimes the case, similar opportunities (e.g. funding and provision of other resources) and risks (e.g. pressure to use the BF's resources for activities outside its charitable purposes) may apply. The objects of the two charities may be complementary but are unlikely to be identical. Usually a charitable PA is established to benefit the general public, for example by advancing the services of the profession in fields such as

health and education, rather than to relieve poverty amongst the PA's membership.

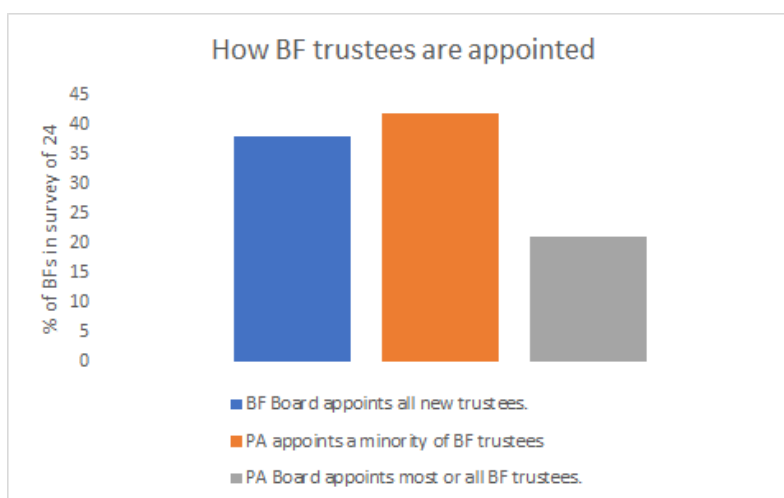
In a minority of cases, the BF has multiple related organisations within the occupation. Sometimes, the different PAs are professional bodies representing separate parts of the occupation in question. In other cases, one PA has regulatory functions for the profession while another PA exists to promote the interests of the profession and individuals working in it.

Who are the BF's trustees?

The Charity Commission makes it clear that it is vital to ensure that the BF and its trustee Board remain independent of the connected non-charity. This means that the trustees must act “only in the interests of the charity” and be free to make, independently of the PA, their own decisions about what services and products the BF provides and to whom. These decisions must always be made in the best interests of the BF and in furtherance of its charitable objects.

The Charity Commission guidance allows for the appointment of some of the charity's trustees by the non-charity/PA but only if this does not prejudice the charity's freedom of action. For an occupational BF, if a significant number of its trustees are also on the Board of the PA or appointed by the PA, there is a risk of conflicts of loyalty arising. Unless carefully managed this could potentially result in the BF's focus on its charitable purposes becoming diluted and the interests of the BF and its charitable objects becoming subordinated to the objectives of the PA.

Most BFs have taken steps to ensure their independence from the PA. In cases where the PA has no formal right to appoint trustees to the BF Board, the latter usually avoids appointing trustees who are also on the PA's governing body or who are employed by the PA. Other BFs have an explicit formal limit (in the charity's governing document) on the number of trustees who may be appointed by the PA. This seeks to ensure that such individuals are not in a controlling majority on the BF Board. In practice in recent years, many BFs have taken steps to strengthen their independence by amending their governing document to remove or further limit the right of the PA to appoint BF trustees.



Nevertheless, many BFs believe that some PA representation on the BF Board can be valuable, particularly in enhancing co-operation and collaboration between the two bodies. They need to communicate and be aware of what the other is doing to maximise the effectiveness and impact of both bodies.

The trend in charity governance, supported by the Charity Governance Code, is towards appointing a skills-based Board. This often involves appointing some trustees from outside the occupation who have useful expertise in other fields, such as accountancy, law, IT, debt and welfare advice. This is being done primarily to get an appropriate range of skills on the BF Board but is also seen as a way of increasing the BF's independence of the PA.

However, there is a, not insignificant, minority of BFs whose Board is comprised entirely or mainly of members of the Board of the PA. In such situations there must be a danger that conflicts of interest and loyalty cannot be appropriately managed and the BF will at times lose, or could be seen to lose, its freedom of action. This gives rise to a serious risk to both the charity and its trustees of a Charity Commission intervention. The BF needs to have systems in place to ensure it can always manage these potential conflicts to ensure it does not lose its independence.

Steps which such BFs have taken include:

1. having clearly separate meetings for the two Boards;
2. reminding trustees at the start of each BF Board meeting, and in between meetings where appropriate, of their potential conflicts of loyalty and of their duty, when acting as BF trustees, to take decisions that are in the best interests of the charity and in compliance with their duties as trustees of the charity; and
3. appropriate induction and training for their charity trustees in this role.

There can be no foolproof guarantee that such measures will ensure BF independence. Much will probably depend on the disposition of the individual trustees, and, in some cases, of staff employed by the PA but working on BF matters.

BF's activities must be confined to its charitable objects

The Charity Commission's guidance also emphasises that the BF must "exist only to further its charitable purposes for the public benefit". It must not allow its resources to be used to support any other activities. The PA's interests and objectives will be different to the BF's, albeit probably complementary. The latter are likely to involve a much wider range of activities than the BF's activities around the relief of individuals in poverty.

It should be noted that the list of activities regarded by the Charity Commission as being for the relief or prevention of poverty is quite wide-ranging. For example, it includes paying expenses related to vocational training, to an individual's travel to earn a living and to providing a welfare benefits advice helpline.

However, there are other activities which the PA might want to offer its members but which should not be funded by the BF. The PA is likely to be also concerned with maintaining the interests, integrity and reputation of the profession and its members, with political campaigning in support of the profession and its practitioners and, indeed, with expanding its membership base. It is unlikely that any of these activities would fall within the BF's charitable objects.

The PA should not exert pressure on the BF to allocate its resources in inappropriate ways for the benefit of the PA. For example, the BF should not use its investment resources to purchase office property to let out to the PA unless such a step would be entirely consistent with the BF's investment strategy and policies and the BF received a full commercial rent from the PA.

Even if an activity under discussion between the PA and the BF clearly falls within the latter's charitable objectives, the BF should be free to resist pressure from the PA to initiate this activity, particularly if it considers that putting its resources towards other activities would be a more effective way of furthering its charitable objects. For example, the PA might want the BF to operate a wellbeing helpline for members in order to enhance its membership offer but, if there was another charity already offering a similar helpline free of charge to the PA's members as part of a wider target group, the BF might decide that setting up its own helpline at the expense of foregoing other worthwhile charitable activities would not be the most effective use of its resources.

Preserving public perceptions of the BF as an independent entity

It is important for the BF that the PA and BF work together to promote the public's, and in particular the PA's membership's, awareness of the BF's identity as a distinct, separate entity from the PA. As one charity representative commented, "collaboration must not be confused with control". If the distinction between the two bodies becomes blurred in members' minds there are a number of risks.

Firstly, members (often the main source of donations and legacies) and other donors might stop supporting the charity financially because they assume that the (often larger) resources of the PA are used to fund the BF's charitable activities. Donors need to be clear who is appealing for money and to whom they are donating. Of course, in this context, the BF should ensure donations and legacies are not erroneously routed to the PA. They should challenge the PA when they suspect this may have happened.

Secondly, potential beneficiaries who are in need might be deterred from applying to the BF for assistance out of concerns that their distressing personal circumstances will be revealed to their professional body. In practice, of course, BFs must have robust procedures around the protection of the sensitive personal data they receive from applicants for assistance (see below).

Thirdly, members not in need of charitable assistance might consider themselves in a sense entitled to help from the BF simply on the grounds that such assistance would be funded out of the PA's resources to which they have contributed through their past PA membership subscriptions. The risk here is that the BF will receive too many applications from individuals who do not meet its criteria for defining "need".

In this context, a number of charity representatives commented that public references by the PA to its BF coming within the PA's "group", "family" or "community" were an unhelpful use of words.

Opportunities for collaboration between BFs and their PAs

The importance of maintaining public awareness of the independence of the BF does not mean that there should be no collaboration and co-operation between the two organisations. The contrary is almost invariably the case. The two bodies can, and probably should, work together to their mutual benefit in increasing the effectiveness and impact of both and in supporting the PA's members who fall within the BF's beneficiary group. Charity representatives generally agreed that it was vital to maintain a good working relationship with the PA – as being beneficial to both organisations and the PA's members.

In this context, many charities have regular meetings at a high level between their representatives and those of the PA. This is considered valuable (i) to keep the two organisations informed about the recent activities and future plans of the other and (ii) to discuss and perhaps initiate appropriate modifications of each other's strategy and targets for the coming period, not least to avoid unnecessary duplication of effort and to ensure no overall significant gaps in services to the PA's membership.

At an operational level, the degree of collaboration varies considerably. Most of the larger BFs use their considerable resources to fund their own separate offices and staff together with other support costs. Even in these cases, however, the PA may provide some support in the form of, say, marketing to its membership and provision of conveniently located meeting space. Smaller BFs, by contrast, particularly those whose own resources are small in relation to those of their PA, tend to make greater use of their PA's services. These may cover a number of areas.

The list in the box below of services which the PA might provide to the BF will certainly not apply in full in every case. However, it seems worth putting down here the types of support which might potentially be available to a BF.

Services which a BF might receive from its PA:

Marketing support	Access to membership data (but see below)
Fundraising	IT and phone systems
Provision of office space	Website support
Staff resources, with appropriate skills	Making payments on BF's behalf to
Collection and transfer to BF of online and other donations	beneficiaries, service providers and volunteers

Services which a BF might receive from its PA (cont.):

Financial record-keeping and reporting
(including preparation of statutory
accounts and annual returns)
Other administrative support
Provision of meeting space

Payroll and other HR services
Advice on governance, accounting, data
protection and other legal issues

Clearly this support can be of considerable benefit to the BF. However, it is worth noting the BF should never feel obliged to take such support, for example where the PA seeks to exercise undue control of the BF via these services.

While the degree of support and collaboration varies hugely, it seems worth looking a little more carefully at the first four items.

Marketing and awareness raising

The PA will have uniquely useful access to members of the occupation with which the BF is involved. For the BF, this group is important as the main target for the BF's communications and awareness raising activities. This is because it is not only the BF's potential beneficiary group but may also be its primary target donor group.

Almost all PAs in practice provide valuable help in raising awareness of their associated BF and so encouraging both applicants for help and donors in their regular journals and other publications and communications with their members, on their websites and at their regional events (for example allowing the charity to have a stand or organising a fundraising activity) etc. This can also benefit the PAs by enhancing their membership offer and improving their reputation amongst their members as caring organisations. It is however important to ensure that, in all PA communications and publicity, the PA makes it clear that all the BF's activities are provided by and paid for by the BF, not the PA. BF publicity material should be clearly distinct from that of the PA to avoid any misunderstanding by members as to who does what.

This is particularly important for the significant number of BFs (particularly amongst the smaller BFs) which do not have their own separate website. Their PA's website's pages explaining what the BF does, how members should apply for its support and how others can donate are often their only 24/7 means of communicating with their target donor and beneficiary group.

This group of BFs should be particularly careful to ensure that all the PA's communications clearly demonstrate that they are two separate entities and may wish to consider setting up their own separate websites.

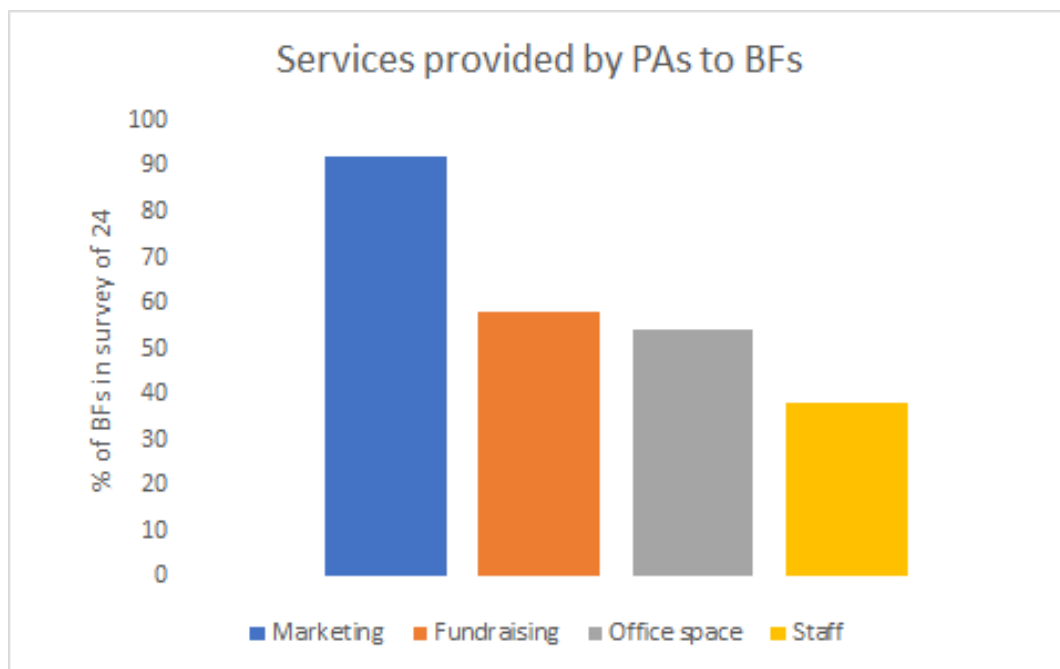
Another downside mentioned by a number of charity representatives whose charity used the PA's services to send out communications to members was that there were times when the PA failed to send out a communication as requested by the BF in a timely manner because the PA gave priority to its own needs to communicate with its members on other matters.

Fundraising

PAs are in a position to offer important support to their BF's fundraising activities. PAs often send out communications to members reminding them of how they can donate to the BF and allow BF fundraising initiatives at the PA's events for members. In addition, of course, the PA's website can, and often does, include a link to the BF's online donation portal.

Even more importantly for BFs, many PAs invite members to add a donation, often of a set amount, to the BF to their annual membership subscription payment. BFs need to ensure this opportunity is maximised and that they receive via the PA the full amount of such donations and have the opportunity to raise Gift Aid on these sums. In a few cases, the BF is currently unable to claim the Gift Aid because the PA will only collect the donations and pass them on to the BF in one single transfer without providing details of individual donors. In this situation, the BF should consider adjusting its data protection agreement with the PA to permit the required personal data to be transferred to it for Gift Aid purposes, always, of course, subject to the necessary consent from individual donors (see below). In a number of other cases, the PA includes a fixed sum within the actual subscription amount and passes this per capita amount on to the BF. This means that, unfortunately, the BF is not entitled to Gift Aid on the sum raised.

However, some PAs are not supportive of their BF's fundraising efforts. Often this is because the PA has other, connected charities which it wants to help raise funds. In a few cases the PA has unexpectedly withdrawn fundraising assistance from the BF. This demonstrates the importance of having a clear, written agreement between the BF and the PA as to what services the latter will provide and for how long (see below).



Provision of office space

In about half of cases in my survey, the PA provides office space to the BF and its staff. This physical proximity of the two staff teams has the benefits of allowing for ease of communication and, so, collaboration between them. It also relieves the BF of the burden of finding and maintaining suitable office premises. For a few BFs, this arrangement is supported by a formal rental agreement setting out the terms, including the amount of rent, what exactly is being offered, the duration of the arrangement and provisions for its review and termination. However, the majority of PAs appear to offer this office space either at no charge or by including an amount for the BF's use of its offices in its general service charge (sometimes called the management fee). The BF must be confident that such an arrangement leaves it paying no more, and preferably less, than the market rate for such services, not least to avoid creating the perception that, by paying over the odds, it is in effect subsidising the PA.

The BFs which have separate office premises from their PA tend to be relatively large, well-resourced funds.

There is also a small number of very small BFs that are run from the home of a volunteer trustee or staff member(s), sometimes using the PA's offices simply as a postal address and for meeting rooms.

Staff resources

Most BFs employ their own staff and pay them directly. This is particularly true of the larger, better-resourced BFs. It ensures the individuals managing the charity's operations only have one "master" and can offer the Board advice which is solely in the charity's best interests. On the other hand, it means that the BF has the expense of managing its own payroll and other HR functions.

Where staff working on BF operations are employed by the PA, this brings the benefit that these staff are more familiar with the occupation and circumstances of the people they are trying to support. However, it may mean that the staff running the BF are not sufficiently experienced in managing a poverty-relieving charity and are unfamiliar with charity legislation and regulation. Conflicts of loyalty may also arise, particularly where the same staff work only part-time for the BF and spend the remainder of their working time on PA matters. There is a clear risk that the interests of the BF may be overlooked in favour of those of the PA.

Who pays for services the PA provides the BF under this collaboration?

There are considerable variations in practice. Some PAs provide these services for free. Others charge for these services but offer the BF an exactly offsetting donation, in effect meaning that the PA is again providing these services at no charge. As noted above, the risk for the BF is that either of these arrangements could be stopped at any time by the PA, in the absence of any clear agreement between the two organisations to the contrary.

A third group of PAs charges the BF for these services without any offsetting donation. In such instances, the BF needs to be satisfied that working with the PA in this way is the best option for the charity. As noted above in connection with provision of office space, the BF needs to ensure that it is getting value for money and not paying for the expenses of the PA itself or more than the market rate for services provided by the PA.

Also, the BF should ensure it gets the full benefit of any charity reductions for joint expenses, e.g. business rates where the PA has benefited from a reduction, and that none of this goes to the PA.

Where (as is sometimes the case) the BF simply pays an agreed fixed proportion of the PA's total overheads, the BF must be careful to agree with the PA exactly how they will calculate what constitutes a fair proportion. This should be set out clearly in writing in order to avoid

difficulties if BF trustees are asked to justify the costs of services they receive in relation to those available in the market.

None of these types of arrangement for providing services should, of course, be conditional on the BF sacrificing its independence of action, particularly undertaking any activity outside its charitable objects.

VAT will usually be payable on services provided by the PA to the BF which are charged for.

Setting out the terms of such services and collaboration

Therefore, it seems essential, especially where the PA delivers a lot of services to the BF and charges for this, to have a written service agreement between the PA and the BF setting out the terms of this collaboration. This should provide clarity for both organisations in respect of their obligations to the other party and what they can expect of the other. Importantly, it can provide the BF with protection against an abrupt unilateral withdrawal by the PA of vital support.

Items this agreement should cover include:

1. details of the specific services the PA will provide the BF;
2. whether or not the PA will charge for any of these services;
3. how the amount of any such charges will be determined, the timing of their payment and how frequently the level of charges will be reviewed;
4. duration of the agreement;
5. provisions for review and termination; and
6. data protection and other legal requirements.

Data sharing and data protection

Where the BF and PA share members' personal data they should have a data sharing agreement between them, in addition to their separate data privacy statements. These documents should, of course, be consistent with one another and kept under review. The data sharing agreement should, amongst other things:

1. set out the “lawful basis” for their data sharing as set out in the General Data Protection Regulation (see below);
2. set out whose data might be shared and the types of data which might be shared;
3. outline the purposes for which the shared data will be used; and
4. detail how the rights of data subjects will be upheld.

BFs and PAs are advised to take expert advice from lawyers or data protection practitioners to ensure that their arrangements are fully compliant with data protection legislation and best suited to their particular situation. They may need to undertake a Data Protection Impact Statement or a “Legitimate Interests” assessment and make a case for data sharing before it is undertaken.

The PA will usually send out a data protection notice to members when they join and sometimes when they renew their subscriptions. This sets out the basis on which the PA holds and uses their personal data. It is enormously helpful if this notice explains how and for what purposes the PA may share this data with the BF.

There are several reasons why the BF may need to access personal data of the members stored by the PA. Firstly, a BF may want to communicate with members of the PA to raise their awareness of the BF and encourage them to donate to it. In this fundraising context, the BF may also want to thank donors individually and to send them targeted fundraising appeals to encourage further donations from them. Under the Privacy and Electronic Communications Regulations, any electronic fundraising communication to members, whether from the BF or the PA, requires the prior explicit consent of the member concerned to receiving such communications. Increasingly, PAs are asking members for their consent to pass on their data to the BF for marketing purposes and in the context of the individual member’s use of BF services. It is important from the BF’s perspective that it understands the scope of any such consents. Ideally these would be stated in a way that allows the BF to build its own database of donors whose consent it has to communicate directly with them independently of the PA.

Secondly, a BF may need to access membership data stored by the PA in order to check that an applicant is a member of the PA and hence eligible for the BF’s support. Such PA sharing of data about membership status with the BF might be justified as falling under the “legitimate interest” category as a “lawful basis” for processing personal data set out in the legislation. Processing data on this basis does not require the data subject’s consent. It applies where the organisation uses personal data in ways the data subjects would reasonably expect it to do (such as, in the BF’s case, the furtherance of its charitable objects) and which have a minimal privacy impact.

The BF may obtain special category or sensitive personal data when considering applications for support. If the BF then stores this information on the PA's IT system this will constitute the BF sharing special category data with the PA. This should be explicitly provided for in the data processing agreement between the two organisations to ensure that this information is stored and used only in accordance with the data protection legislation.

Disciplinary issues

Most BFs appear to have no formal grant-making criteria relating specifically to members of the PA who are subject to disciplinary action by the PA for failing to comply with its code of conduct. The majority of BFs I spoke to were clear that such disciplinary sanction did not automatically render an individual ineligible for assistance. The general response was that the BF considers applications for disciplined members on their individual merits, taking into account the individual's overall circumstances, albeit taking a particularly close look at the facts of the case. In a few cases, the regulatory body imposing the sanction proactively reminds the sanctioned individual of the existence of the charity in case this individual were to find themselves in difficulties. In any case, data protection issues arise about how the BF would become aware that an applicant for assistance was subject to the PA's disciplinary procedures and whether the PA would be justified in sharing this information with the BF.

Risk assessment and management

In carrying out their regular risk assessments for the BF, its trustees need to take into account the BF's relations with the PA and the risks attached to this (e.g. loss of independence, activities outside BF's charitable objects, abrupt termination of services previously provided by the PA). They will then need to consider whether or not steps already put in place to mitigate these risks are sufficient and whether or not further mitigating steps are required.

Conclusions

Finally, and briefly, some conclusions:

1. A good relationship between an occupational benevolent fund and its professional association is important. It can be of benefit to both organisations, and especially to the former, to work together collaboratively in support of the members of the latter.
2. It is vital for the benevolent fund to maintain its independence of the professional association so as to be able to focus exclusively on its own charitable objects and its own best interests.
3. A happy balance between these two considerations is sometimes difficult to achieve. Occasionally there may well be tensions between the two organisations.
4. In practice, the details of this “happy balance” will vary. One significant consideration here is probably the size and resources of the benevolent fund, both in absolute terms and in relation to those of the professional organisation.
5. The smaller the fund the more support services provided by the professional organisation, particularly provision of office space, staff resources and administrative support, seem likely to be beneficial.
6. Larger benevolent funds, as well as the smaller ones, often benefit from support from the professional organisation around marketing and fundraising.
7. Care should be taken to ensure that any data sharing arrangements between the two organisations are fully compliant with data protection legislation.
8. There should be clarity for both parties around what services the professional association will provide the benevolent fund and whether (and how much) the latter will be charged for these.
9. Benevolent funds should work to foster public awareness, particularly amongst the professional association’s membership, that the charity is a distinct organisation with different objectives to those of the professional organisation and separately funded.