

Contracting

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What is a contract? Let us begin by exploring some of the language which is sometimes used in the commissioning process. Contracts are also known as deeds, agreements, purchase orders and so on. The marriage licence and a bus ticket are also examples of contracts. The example of the bus ticket shows clearly that contracts can be implied. Simply by boarding a bus, which is clearly displaying its destination, a contract has been formed between the bus company and the traveller. The company can expect to be paid the fare it publishes, and the traveller should be taken to the chosen destination. Of course there is no expectation that such a system could be used for all purchasing, and other, more sophisticated means have developed.

Service level agreements (SLA) is a term commonly used in health authorities. The origins of this term are unclear, but it can sometimes be misunderstood. Examples of SLAs are found in health and local authorities where a section or department agrees to supply a defined level of activity to a written specification. As it is not possible to contract with yourself, these documents have no legal standing, but by use of a contract style, they clarify each section's responsibilities and priorities.

The use of SLAs has been hijacked to some extent for use when one agency wishes to act 'softly' with an outside body, perhaps a charity or local voluntary group. This in itself is no bad thing, unless it leads to badly constructed contracts with no definable responsibility and no serious commitment on either side.

For the purposes of this paper we suggest that a contract should be regarded as 'a clear understanding, in an appropriate form, of what is to be done, for what payment'. The word appropriate is important here. Low cost, low risk services do not need the same level of sophistication as might be required in higher cost/risk situations. This can also be true of work with

voluntary bodies, where there is a high degree of trust. Simply put, the contract should only be as complicated as the situation demands.

There are three significant parts to a contract:

- Protection - legal parts
- The services - specification
- The process - payment systems
 - reviews
 - evaluation
 - monitoring

It is important to view each part in its own context. The specification, or definition of the service, is always important, as this is what actually happens and what you monitor against. Each of the particular parts will need varying to suit the particular circumstances.

Constructing a contract

Let us now consider how to contract and what a typical route to constructing a contract might be. To start with it is important to decide what you want and to draft a specification. Following this you should find out what you can get. It is pointless trying to contract for services which are impossible to provide, or require a developmental stage and time to grow. The Wright Brothers knew that it was possible to fly, and that passenger transport would be available one day. But they also knew that a single engine bi-plane which would cover only half a mile was all that could be achieved at the time.

Gaining understanding and commitment is an important stage. The provider's contribution to this stage can be crucial in improving the outcomes. Misunderstandings at this point can lead to disaster when the services are implemented.

The monitoring phase

After the contract is signed and the service starts, a monitoring phase is reached. This does not sound exciting, but is essential to ensure the service delivery is on target, and to allow for improvements. A distinction should be made between contract management, that is ensuring you get what you pay for, and quality of service. These can be done together, but should not be seen as one function.

The Gloucestershire experience

Some of the difficulties which have arisen from the projects funded by the Initiative can be summarised as: the need to taper in the start of a new service; the importance of understanding by all stakeholders; payment

systems; and gaining a balance of monitoring information. Let us consider some practical examples.

The provider in one of the Gloucestershire projects employed a relatively large number of care workers, guaranteeing wages, before any clients were on stream to receive the service. This resulted in high start-up costs with no apparent benefits. Conversely in one case, the purchaser agreed for the full volume of service from day one. This completely flooded the provider and resulted in major failures in service delivery. In both cases a staffing introduction with tapering over a two to three month period would have avoided the problems.

A shared understanding between stakeholders sounds simple, but is not always so. This could be illustrated as gears either in mesh or in mash. For example, in the case of one contract, senior managers on both sides of the contract fully understood what was required; on the purchasing side, operational staff understood only part of the process. Worse still, the care staff themselves had not been informed of the contractual requirements. The result was an idiosyncratic interpretation of the services required and the rapid development of problems.

A different, but equally significant, example concerns a day care service developed in a sheltered housing scheme. Although the residents were involved in the project, some of them did not fully understand the implications, and became overly focused on the improvements to the accommodation that this new facility would bring. In fact it was the experience of change, rather than any actual effect, which caused concern. Once an understanding was achieved, problems diminished.

Payment system problems have centred on issues of cashflow, particularly for small organisations with little or no reserves or billing methods. We have found that start-up costs can distort cashflow if not taken into account, and that slow payment systems have little advantage when developing new services. There has also been a lack of understanding of mechanisms, with knock-on effects for some smaller organisations.

Cashflow problems have also occurred where agencies did not have any system for producing invoices or recording payments and so on. Time taken on establishing this type of infrastructure proves of immense value later.

What is to be learnt?

The correct balance in monitoring has been a crucial factor in providing cost effective services. The temptation for the purchaser to try to manage individuals in the provider organisation was initially high, but large amounts of data on care worker activity only seemed to generate work without improving outcomes. Measuring outcomes (rather than counting

outputs) against the contract specification proves the most useful and productive method.

The development of well defined specifications for services can be seen to produce positive results. Not only can purchasers and providers use these specifications to control service delivery and measure outcomes, but users and carers gain a positive understanding of what will happen. These specifications also make the services transferable to other sectors and other localities. Clear understanding can be passed from one employer, and management, to another reducing the time spent on service design.

Local sensitivity can be built into the contracting process by the use of contracts as a framework which can be adapted at local levels, sharing knowledge and experience, but not prescribing provider or service detail.

The involvement of providers in a well understood contracting process provides the basis for a partnership approach to the relationship between statutory and independent sectors. In addition, people can also benefit by being able to access a service of their choice with clear service outcomes, whether or not they are accessing services through the social services department.

An important part of contract negotiation is, of course, the price of the service and an extremely useful offshoot is that the contracted service has a defined cost. This should enable resource allocation to be better targeted. Similarly, it appears that the clear definition of service and funding can result in efficiencies, rather than just lowering of cost at the expense of quality.

Conclusions

- Planning is essential. Making it up as we go along will result both in a bad contract, and a poor service.
- Continued contact with the provider is essential. The process does not end with the signing of agreements. This contact should be focused, not just conversational, and should avoid over-detailed reports.
- Changes to a service can be achieved while a contract is in place; contracting does not have to be a static process. Adapting to different circumstances is inevitable and should be encouraged. The contract can be used to provide a record of changes which keeps everyone informed.
- It is important to be realistic about what can be achieved. Do what you can, rather than what would be the ideal. This pitfall is particularly apparent in voluntary and charitable organisations whose ethos requires them to campaign for improvement as well as being a provider. This is not wrong, but can lead to conflict and to over reaching.

Making it work

Contracting is an extremely powerful and effective tool when used properly. Although in itself contracting will not cure everybody's problems, it can, however, be a vehicle for solutions. Finally, it is important to talk to providers and stakeholders; to agree what is to be provided; to listen to providers and users and to monitor performance and keep on target.