

DBULLETIN

Managing Risk in Supporting People Contracts

Local Authority Supporting People agreements are getting longer and more repetitive! Cutting through the jargon, the main object is to ensure that the buyer of the service, typically the local authority, gets the standard of service that it is paying for and the care provider, providing the service, has ascertained its costs and risks in agreeing the price. If you find yourself negotiating a supporting people contract for a care provider (or for a group of providers) service levels will be a key area for debate- both internally and externally.

Importance of service description

Surveys have revealed that one of common reasons for failures in transferring the provision of services to a third party is not concentrating on the detail of the actual services which a service provider is to provide. Often parties can be distracted by the drafting of basic contractual provisions in the 'front end' of the agreement, which set out the framework of the relationship. Regrettably, such provisions are of limited assistance, without an adequate service description.

The service description with accompanying service levels are often found in a schedule. These should be checked by those familiar with the day to day operations Adequate detail is essential for example:

- so that both parties know what they have to do;
- to fix the costs for the services. A service provider cannot price the service if it does not know what it has to provide. The inclusion of additional services (or the imposition of a higher standard) after signing the contract can result in a 'cost creep'.
- to provide an incentive to the provider. In arm's length transactions, clear service levels coupled with financial penalties and, possibly, incentives provides a performance incentive to the care provider providing a service.

The drafting of service levels requires adherence to a number of practical rules:

- As with the service description one should concentrate on specific outputs rather than tasks.
- The service levels must be capable of objective measurement.
- Keeping the system simple – over complex service levels can create monitoring problems and can involve the care provider in extra costs (see below).

For a more detailed discussion on service levels, please see our briefing "*Providing Care Services - Negotiating Service Levels and Incentives to Perform*".

Identifying costs and liabilities

Recent forms new supporting people contracts from a number of local authorities now permit local authorities to terminate all or some services on as little as 6 or even 3 months notice. Alternatively, the economic risk of a reduction of ODPM funding is now being laid off on the care provider. Thought needs to be given, for example, as to how to deal with the termination on short notice for services entailing high "tooling up" costs.

In addition, care needs to be taken to measure additional compliance costs where pricing the services. For example, some local authorities now require the service provider to monitor its own performance, and provide records to the local authority.

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In addition, all service providers are required to demonstrate that their procedures comply with a range of local authority policies. This may also entail the care provider reviewing and, in some cases, renegotiating their sub-contracts which also needs to be considered when fixing the price.

If in doubt amend the offending clauses and see if and how the Local Authority reacts.

Liabilities

While some contracts contain limits on each parties liability, increasingly certain categories of the service providers liability (for example, in relation to employees) may be uncapped. It is essential to check, with the care provider's own insurers, that it can comply with the contractual obligations imposed by the local authority in relation to insurance (for example the level of cover).

Apart from establishing that the contract is commercially viable, the care provider trustees will want to know the extent of the uninsured liability it had to bear – and how such risk can be mitigated.

Assistance from the Office of Government Commerce

For those involved in negotiating supporting people or similar contracts with local authorities, the OGC Good Practice Guidance (www.ogc.gov.uk) offers helpful guidance if negotiating with an intransigent local authority officer.

Although junior officials in local authorities pay little attention to such guidelines, they are worth reading before you 'lock horns' with the local authority officials. However, you will be able to negotiate, far more effectively, if you can 'gang up' with other local providers to negotiate terms and conditions.

Signs of Success

Clearly, these are not the only requirements for a successful relationship. Mechanisms, for example, for service improvement and flexibility are also needed. That said, a sign of a successful relationship is when the signed agreement remains, quietly, in the filing cabinet, until the contract comes up for renewal.

For more information please contact:

Andrew Crawford on 020 7880 4283 or andrew.crawford@devonshires.co.uk