

COMPACT CODE IMPLEMENTATION GROUP'S FINAL REPORT, APRIL 2010, TO BE TAKEN FORWARD BY THE LOCAL COMPACT WORKING GROUP

1. Background

- 1.1. The Compact Code Implementation Group (CCIG) was established in 2006. It has been chaired by Paul Ryan (Head of Contracting, Integrated Commissioning) and has been serviced by The Alliance. Membership comprised three health and social care commissioners, three Alliance representatives, and officers from the Council's Adult Social Care Accountancy Department and Regeneration Team.
- 1.2. According to its terms of reference, CCIG's purpose was to 'oversee the implementation of the Funding and Procurement Code and its review'. It also oversaw 'the drafting of the Working Together Code' and made 'necessary representations during the drafting of any other Codes', e.g. volunteering. Significantly, CCIG also developed training on full cost recovery and drafted the Herefordshire Standard Contract which, as a process at least, was a significant joint effort.
- 1.3. Herefordshire's Health and Social Care Funding and Procurement Code (FPC) had been published in 2006 – two years after the Health and Social Care Compact and two years before the Herefordshire Compact. The content was developed by a tripartite steering group of Council, PCT and Alliance representatives and drafted by The Alliance. A 36 page document (with a one page summary) its purpose was to set 'ambitious goals for bringing about significant improvements in the funding relationship between third sector organisations and their public sector funders'. It emphasised that funders and the third sector 'must move forward together to achieve their shared aspiration of achieving better public services...success depend on both parties taking action to change the way they work.'
- 1.4. CCIG commissioned a review¹ of the FPC in 2009 responding to the commitment in the FPC to a 'full review...every three years'. The review also anticipated a refresh of the FPC that, at the request of the Herefordshire Partnership Management Group, should represent all public and third sector interests not just health and social care.
- 1.5. This report is based on the review report and also on discussions at CCIG meetings over the past few years. It is intended for use as reference by the Local Compact Working Group which now has sole responsibility for the development and implementation of the Local Compact in Herefordshire. CCIG disbanded at its final meeting on 23 March 2010 having approved the content of this report.

¹ Ros Cassy, 2009, 'Review of Herefordshire's Funding and Procurement Code'

2. Key content to address in the refreshed FPC

2.1. Resource commitment

Three-year contracts have not been as available as was expected and do not appear to be the norm (FPC 4.5, page 17, and 6.1, page 23). There are a number of renewable or roll-on one-year contracts in place because of, according to HPS:

- Perennial public spending uncertainties and absence of guarantees from Government,
- In adult social care, the emergence and forecast growth of personal budgets meaning that some/many HPS contracts will be tapered or phased out.
- Constraints on commissioning capacity.

Shorter term funding arrangements are sometimes appropriate, e.g. for pilot services, engagement/research work and when strategic direction is unresolved. Furthermore, in anticipating constraints, the FPC did say (4.5, page 17) that 'wherever practicable' longer term contracts would be used.

It would seem sensible, therefore, to consider qualifying more clearly the expectations relating to three-year contracts in the refreshed FPC without undermining the importance of the principle (which the Treasury, in 2002, linked to 'better value for money'²). Government undertakes to 'commit funding for three years' to providers in the refreshed national Compact (9.1) and the National Audit Office (NAO) advised that '...the length of funding should be tied to length of the objective'³

2.2. Payment terms

The provision of payment in advance is included in some but not all contracts and is intended to assist providers' cash flow. The FPC (6.3.5, page 24) did temper expectation in stating that payments in advance would be 'where appropriate and necessary'.

Moving forward, in the interests of market management, i.e. to retain or sustain providers requiring working capital, it would seem necessary to clarify conditions for appropriateness or necessity in the refreshed FPC. The refreshed national Compact helpfully places responsibility with both parties (section 10, page 13) and implies consideration be given on a case by case basis:

- Government: 'Make payments in advance...where there is a clear need and where this represents value for money'
- Third sector: 'Be clear about payment terms and, if appropriate, demonstrate why payment in advance is required'.

(NB. The DH standard contract provides the flexibility for payment in advance for smaller contracts with an annual value of £130 000 (or less) for organisations with the equivalent of 50 full time members of staff or less.)

The refreshed FPC could also prompt inclusion of this item, as standard, in tender documentation and in initial conversations about risk between commissioner and provider.

² HM Treasury, 2003, 'Guidance to Funders: Improving funding relationships for voluntary and community organisations'

³ National Audit Office, 2009, 'Financial relationships with third sector organisations'

2.3. Contract notice, termination or renewal

The FPC (6.6.3, page 26) stated that ‘funders will use their best endeavours to provide six months’ notice...whenever they intend to terminate a contract...’ The refreshed national Compact (13.3, page 14) states that Government undertakes to ‘give a minimum of three months’ notice in writing...’ Perhaps the refreshed FPC could include both – i.e., best endeavours to give six months’ notice but a minimum of three. This would provide clarity.

Occasionally providers have expressed concern over lateness of notice in writing, generally resulting in renewal, but creating anxiety beforehand. The FPC does not include the provision that Herefordshire’s standard contract has (15.2): ‘if by 12 weeks [before contract end date] the parties have not agreed...and that no party has serviced a Non-Renewal Notice, then this Contract shall continue...’ In other words, absence of written confirmation means continuation.

Providers that do not have the standard contract (e.g. older service contracts/SLAs) would welcome inclusion of this principle in the refreshed FPC to encourage earlier notice, but more importantly, to enable implementation of an exit process in the case of termination, particularly if redundancies are a consequence.

2.4. Cost-price

For some time now it has been accepted by both parties that ‘costings for contracts will take into account the full cost of delivering the service’ (FPC 6.4., page 25) including relevant overhead costs (i.e. costs associated with the provision of that service). The refreshed national Compact (8.1., page 12) states that Government recognises ‘that it is appropriate to include relevant overhead and administrative costs in applications’.

An important piece of work organised by CCIG was to provide training on full cost recovery to providers in 2007.

Moving forward, whilst there is nothing to add in respect to the principle, it may be appropriate to consider its application, particularly when requesting cost breakdowns. The refreshed national Compact (8.3, page 12) says that Government will be ‘consistent across all sectors’ when requesting cost breakdowns.

Furthermore, providers will continue to question why cost breakdown is important or relevant to commissioners (apart from a declaration about the percentage for overheads). Price, rather than cost, is the focus, alongside quality, in respect of value for money, particularly within a competitive situation. The price quoted is not always the same as the full cost, in some cases less. That is a matter for the provider who, when assessing risk, will need to assure commissioners that the price they have quoted is sustainable for their organisation.

2.5. Monitoring

Both parties value the importance of monitoring as a tool to ensure transparency, accountability and honesty. According to the NAO⁴ it 'supports better understanding between funder and provider and promotes partnership working...shared learning about what works'.

Nevertheless, it is accepted that processes and frequency of monitoring, particularly with reviews, are inconsistent and would benefit from general agreement over principles. This would be an opportunity to discuss drivers and constraints on both sides as well agree a standard process so that both know what to expect. The following could be considered for inclusion in the refreshed FPC:

- That monitoring and reporting are proportionate to the nature, value and risk of the contract (e.g. include minimum and maximum frequency of reviews)
- That processes are streamlined and cost effective with duplication or undue burden avoided, i.e. considering/preparing the same information twice
- That processes are transparent and two-way, need/purpose is justified and communicated especially in the case of reviews; feedback in writing is guaranteed within an agreed period
- That risk, i.e. financial, performance and reputational, is assessed by both parties together, including before the contract starts, and that this is balanced and 'proportionate to the nature and value of the contract' (10.2, page 13, refreshed national Compact). The NAO⁵ advises that this occurs 'before the award' as well, i.e. at the tendering stage, and therefore would involve all bidders.

2.6. Procurement/tendering

A number of items, discussed at CCIG meetings, are worthy of further exploration:

- 'Reasonable requirements' for PQQ thresholds
- The significance of acquA and quality assurance in PQQ/tender assessment
- Adequate timescale and notice plus flexibility over interview dates
- Social clauses, social return on investment and added or full value.

2.7. Grants

With the forecast of significant public funding pressures it would seem an important time to reconsider the following:

- The purpose of grants
- The commitment in the FPC (7.7.1, page 28) of funders to 'make clear what grant funding is available in the following year...by wide dissemination...'
- The Herefordshire standard contract threshold, >£20,000, and the issuing of a letter or grant for sums below.

2.8. Personalisation

Although not strictly a Compact matter, it is in the interests of market management for there to be some dialogue between commissioners and providers over contract terms between providers and personal budget holders, e.g. duration, notice and payment.

⁴ NAO, 2009, 'Intelligent Monitoring'

⁵ *ibid*

2.9. The Herefordshire Standard Contract

This is currently being reviewed by commissioners with an opportunity for providers to comment. Ongoing review arrangements should be considered as the contract is the key means of implementing the principles and standards discussed above.

2.10. Informing, Consulting and Partnership Code (IFPC)

There was no review date set for the IFPC but the original working group had agreed this would be required after a year, i.e. summer 2010.

3. Future Compact working arrangements

3.1. Herefordshire Partnership

It is proposed or expected that Herefordshire Partnership (HP) will take, or continue to take, primary responsibility for formal relations between the public and third sectors and that this is declared widely. HP will therefore approve all Compact publications and future working arrangements. HP has agreed to receive a regular report on Compact as a standing item at Herefordshire Partnership Management Group.

3.2. The Local Compact Working Group (LCWG)

As the lead body on Compact matters the LCWG should appear within the HP structure chart, cross-cutting the six Policy and Delivery Groups. Through dedicated working groups, it will take on the responsibility of refreshing the FPC as well as the other Compact documents. The membership of each code working group will reflect the key stakeholders required to develop / refresh and imbed the code within Herefordshire Partnership.

3.3. Next steps

A joint letter will be sent to the following by the Chairs of CCIG and LCWG drawing out the main findings of this report:

- Relevant HPS Directors and the Chief Executive
- Head of HP
- Third Sector Board
- Local Compact Working Group.

This report will be made available electronically on the Herefordshire Partnership, and other partners' websites as appropriate.

4. Compact Code Implementation Group Members

Paul Ryan, Integrated Commissioning, Chair
Martin Smith or Phil Hamer, Integrated Commissioning
Dawn Stradling, Supporting People
Melanie White, Children and Young People's Directorate
Gerry Harrison, Adult Social Care Accountancy
Nina Bridges, Community Regeneration Team
Marion Tweed-Rycroft, Services for Independent Living and The Alliance
Janet Fellows, Aspire and The Alliance
Andrew Strong, The Alliance.

CCIG, April 2010.