

Partnerships with principles: putting relationships at the heart of public contracts for better social outcomes

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There is increasing recognition that relationships are important to improving the delivery of public services and hence social outcomes. Practitioners have observed that a ‘transactional’ approach to contracting may not always be appropriate. Fortunately, an alternative - relational contracting - has been well-researched and applied in the private sector. However, there has been less work on its use in grants and contracts involving government or public bodies.

This policy brief summarises the Government Outcomes Lab’s introduction to relational contracting: [Partnerships with principles: putting relationships at the heart of public contracts for better social outcomes](#).

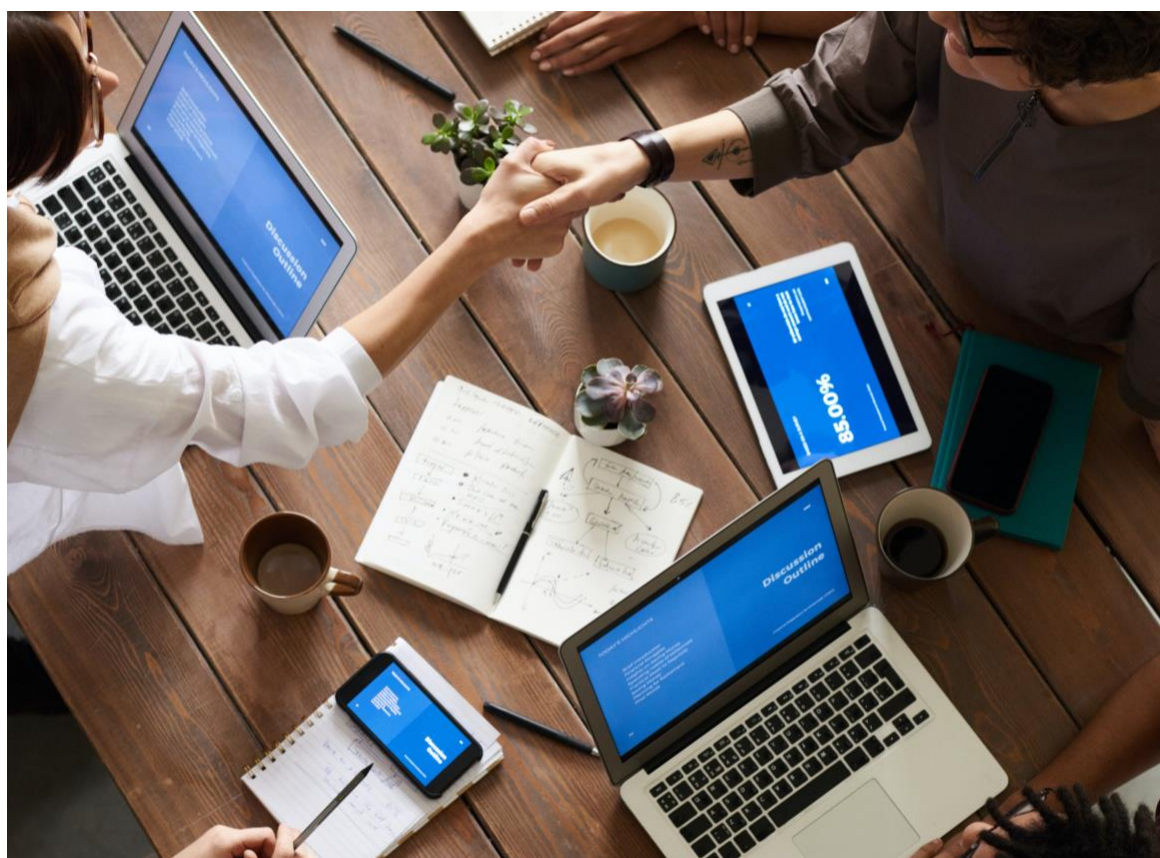


INTRODUCING RELATIONAL CONTRACTING

A contract, at its most basic level, describes the rules and norms that govern the relationship between two parties. Traditionally, contracts have tended to be framed as transactions, in which each party seeks to maximise their own interest at the expense of the other. To prevent this, lawyers have moved towards increasingly detailed contracts that try to cover every eventuality. However, in many cases, parties' interests are aligned around the objectives of contract, and greater flexibility can help to adapt to unforeseen circumstances. By focusing on building and maintaining trust between the parties, a relational approach might sometimes be more effective in improving the outcomes of the contract.

Relational behaviours exist to some extent in all contracts. Many partners will naturally work relationally as a way to build and maintain high levels of trust, in order to ensure partnerships run smoothly and to minimise the risk of resorting to the courts. We call this *relational practice*, and it may occur regardless of the content of the formal contract.

However, partners may seek to be more deliberate about their relational practice, by making the building and maintenance of trust explicit in the written contract. Important features can be explicitly defined from the outset, which we call *relational intent*. This can be further strengthened when these relational behaviours are codified into principles that are enforceable by a court, becoming a *formal relational contract* or *vested contract*. In this briefing, and the guide which underpins it, we are generally referring to the adoption of a greater relational intent within public contracts, whether legally enforceable or not.



WHEN TO TAKE A RELATIONAL APPROACH

There are a number of circumstances which may lead public sector organisations and their partners to choose to be more deliberate in adopting a relational approach to contracting.

1. *Complexity*

For many goods and services that organisations buy, it is relatively easy to specify the important features in the contract and verify whether they have been delivered, making them amenable to traditional, transactional contracts. However, other products and services are much more complex - such as delivering social support to a vulnerable population. Here, it can be difficult to specify exactly what is needed, how much it will cost and/or how to verify whether it has been delivered. As a result, contracts may need to be adapted along the way, and a relational contract can aid this process.

2. *Changeable environment*

As well as changing understanding of the product or service itself, external forces may change the requirements of a service or the ability of a provider to deliver it at the expected cost. Prescriptive contractual terms can hamper the ability to alter the approach, making the relationship less resilient to external shocks (with Covid-19 being an extreme example). The broad principles enshrined in a relational contract can help to maintain focus on the overarching goals, rather than on the specific method of reaching them.

3. *Goal alignment*

Traditionally, contracting is seen as an adversarial process, assuming the goals of the purchaser and the provider are different, and each will act in their own self-interest. However, often parties interests are relatively well-aligned, and this alignment can be strengthened through the contracting process. Relational contracting allows parties to acknowledge and leverage their mutual goals, while retaining some levers - reputation, the formal contract, and explicitly articulated shared principles - to back up trust.

4. *Mutual reliance*

In order for a contract to be delivered effectively, collaboration is often required, recognising that parties may each need to bring certain skills and assets to the table. It may be difficult to specify or put a value on each party's contribution up-front, but a relational contract allows the articulation of mechanisms for negotiation and decision making throughout delivery that can underpin a closer and more collaborative relationship.

THE CHALLENGES TO A RELATIONAL APPROACH

In certain circumstances, relational contracting may lead to a more effective contractual relationship. However, it is not always the most suitable approach. There are a range of challenges to overcome, particularly when one of the parties is a public body.

1. *Opportunism*

In any contract, one party may seek to opportunistically advance their own interest at the expense of partners. Relational contracting seeks to limit the risk of opportunism by building trust, but it can also limit the ultimate recourse of litigation by making contractual terms less clearly enforceable.

2. *Scrutiny and corruption*

Relational contracting can sometimes appear like improper collusion. This can complicate scrutiny of public contracts, making it harder to identify and protect against corruption. Even in the absence of actual corruption, the mere accusation of corruption can be used by third parties to undermine the contractual relationship.

3. *Restrictive procurement rules*

Strict processes surrounding public procurement, enshrined in legislation and policy, aim to limit corruption and maximise value for money, reassuring taxpayers that their money is being well spent. However, the ways in which these rules are applied can make it harder to build trust-based, long-term relationships with a provider.

4. *Misunderstanding*

While parties may ostensibly agree on a set of shared principles to govern a relational contract, judgement will be required in interpreting what they mean in practice. Depending on their organisational backgrounds and priorities, parties may come to very different conclusions about what those broad principles actually mean.

5. *Unequal power dynamics*

Contracts are held between a range of different parties, and as a result, one party may have considerably more power than another. These power asymmetries exist in all contracts, but may be magnified in relational contracts, where greater flexibility and room for interpretation may be abused by the more powerful party.

6. *High up-front investment*

The reduction in legal recourse which may accompany a relational contract may be particularly intolerable if one of the parties is required to make a large and specific investment in the service. In these circumstances, the provider needs to be reassured that its investment is protected if things go wrong.

7. *Transaction costs*

A relational contract avoids the need to specify up-front every eventuality which may arise during a contract. However, there are still transaction costs associated with building trust before the start of the contract, and undergoing negotiations during delivery, which must be weighed against the benefits of a relational approach.

8. *Staff turnover*

The trust which sustains relational contracts is grounded in personal relationships between individuals within each of the contracting organisations. The ongoing process of building and maintaining trust can therefore suffer setbacks if there are frequent or dramatic changes in key stakeholders.

HOW TO ADOPT A RELATIONAL APPROACH

Adopting a relational approach to a contract may be appropriate if the benefits outweigh the challenges. This may happen organically, regardless of how the contract was designed, but there are a number of practices which embody relational intent, and hence can help to bring about a relational contract.

1. *A strong relationship*

A successful relationship during contract delivery is much more likely if the parties have already built a productive relationship beforehand. This begins with market stewardship - contracting authorities should be aware of who can provide a particular service, and ensure they maintain positive relationships with those potential providers. When a particular service is required, a more focused relationship can be established. This can be achieved through procedural tools like a staged procurement process, which gradually narrows the field as a purchaser gets to know potential providers.

2. *Tightly defined goals*

Flexibility in *how* goals are achieved is an important feature of relational contracts. However, *what* these goals are, and how their achievement will be verified, should be clearly articulated so all parties are pulling in the same direction. Both practitioner feedback and academic research suggests that a strong formal contract helps to set the tone of the relationship and thus supports relational working during delivery.

3. *Shared principles*

To help keep parties on the same page over the course of the contract, they may agree to abide by a set of shared principles. These principles are explicitly articulated in the contractual documentation. They dictate the values and behaviours that will guide how the organisations will interact with one another, such as reciprocity, autonomy, honesty, loyalty, equity and integrity. If parties adhere to their shared principles, the scope for conflict should be minimised. Where it does arise, principles provide a framework to address grievances.

4. *A suitable procurement procedure*

Public procurement processes can sometimes act as a barrier to many of the practices that help to unlock the benefits of relational contracting. Pre-award collaboration can seem to cut against principles of fair and open competition. However, some procurement regimes, such as the EU's 'Light Touch Regime', may allow for more flexibility, acknowledging that competition is not always the best route to public value. Regardless of the procedure chosen, the tender process itself can be used to identify a provider's propensity to relational working.

5. *A risk-sharing mechanism*

Contracts provide a way of sharing various kinds of risk between the parties. Some risks can be anticipated, and how they will be shared can be specified upfront. Others cannot be anticipated, and a relational contract may therefore stipulate a governance mechanism to deal with risks as they arise. In addition, the payment mechanism of a contract may facilitate the management of financial and delivery risks, by aligning the purchaser and provider around a set of verifiable goals.

6. *A decision-making structure*

Relational contracting anticipates changes to the terms of engagement between parties during delivery to deal with uncertainty and capitalise on collaboration opportunities. However, to unlock the benefits, ongoing communication is essential to facilitate negotiations. Doing so effectively requires clearly agreed forums and processes for communication, negotiation and decision-making from the outset.

Relational contracting in action

The Kirklees Better Outcomes Partnership

Kirklees council, a municipal government in the North of England, has been contracting support services for vulnerable adults for around two decades. This cohort of service users experience multiple and compound disadvantage and are understood to need support to overcome homelessness, substance misuse, mental health problems and unemployment. It is hard to know upfront how many people will need support, or what support they will need, and for how long. Prior to 2019, the council held 15 contracts with 9 different organisations to deliver support services to this group. Providers competed to work with service users so as to meet utilisation targets, rather than collaborating to meet a broad range of intersecting needs. Recognising these issues, the council explored a different approach, which led in September 2019 to the launch of a new service that brought all the providers under a single contract managed by a newly-formed entity called Kirklees Better Outcomes Partnership (KBOP). The contract did not include a detailed specification of the length and intensity of support to be provided to service users. Instead, payment was tied to providing proof of positive social outcomes that people on the cohort could achieve, according to pre-agreed metrics. This allowed greater flexibility to adapt to service user needs that are varied and ever-changing.

The Plymouth Alliance Contract

A similar model for a similar cohort of adults was launched at a similar time in another UK local authority, Plymouth. Rather than use an outcome-based payment mechanism to unlock the benefits of relational practice, it relied on shared governance guided by a set of 'principles'. A 10 year contract was signed with seven providers whose CEOs join three council commissioners to comprise a 10-member body controlling an annual budget of £7.7m. The body makes decisions with reference to a set 'alliance principles' enshrined in the contract, as follows:

- to assume collective responsibility for all of the risks involved in providing services under this Agreement;
- to make decisions on a 'Best for People using Services' basis;
- to commit to unanimous, principle and value based-decision making on all key issues;
- to adopt a culture of 'no fault, no blame' between the Alliance Participants and to seek to avoid all disputes and litigation;
- to adopt open book accounting and transparency in all matters;
- to appoint and select key roles on a best person basis; and
- to act in accordance with the Alliance Values and Behaviours at all times.

Credit to KBOP, Kirklees Council, Plymouth Alliance, & the GO Lab research team.

You can read more about the benefits & challenges of relational contracting, and further case studies, in the Government Outcomes Lab's guide [Partnerships with principles: putting relationships at the heart of public contracts for better social outcomes](#).