

Partnering and open book – till dispute do us part?

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Hardly a week seemingly goes by without a private announcement about the how a once fine and publicly conducted romance between a housing organisation and its construction partner has gone sour.

This short, but perhaps controversial, briefing aims to share the evidence obtained by HQN that partnering is not always delivering the desired outcomes, be they cost, quality or timeliness. It is an insight into what HQN has been finding and in part is shaped by anecdotal evidence gleaned elsewhere from the consultancy and legal professions working within the housing sector.

Background

During the earlier part of this decade much was written about the benefits of partnering, and housing organisations were put under immense pressure to adopt it, regardless of its unproven record in the sector. Touted as an elixir, a complete industry has been built on its acceptance.

Open book is new to the sector and has been actively promoted by contractors for obvious reasons; but is it open book or 'cost plus' dressed up as open book? There is a world of a difference, but do housing clients know what they are getting?

There are examples where partnering is working and working very well. There is evidence that contractors have made a positive contribution and clients are responding to the challenges often required of them. This briefing however, concentrates on the things that can and do go wrong.

Partnering

The term 'partnering' means different things to different people but fundamentally it is an attitude of mind. Contrary to popular belief, trust is not the firm foundation on which partnering success is secured. During the early days of the relationship, respect is what is needed. Trust will come later providing there is:

- Commitment to agreements
- Credibility
- Competency
- Contribution
- Collaboration...

...on both sides!

Partnering is hard work and a specific duty for all parties to deal fairly with each other and their sub-contractors, specialists and suppliers, in an atmosphere of mutual co-operation.

The thinking behind partnering is principally about prevention rather than cure and a move away from the ills that have afflicted the housing sector and hard-bitten contractors. This has to be a positive way forward.

It is inevitable that problems will be encountered. The operating environment is tough, particularly for those focussing on responsive maintenance services, and the margins are reportedly tight.

So why do some partnering arrangements fail?

Treating partnering as an easy option

Setting up a partnering contract, and driving it through to completion, requires a greater level of professional skills and input than does a traditional contract. Failure to recognise this can lead to serious underestimation of the resources required to make partnering work.

Lack of effective client input

No partnering arrangements will succeed without the input of an informed and educated client, with the commitment to make partnering succeed, supported by the resources required to deliver on that commitment. All too often this role and the resources required to deliver it are underestimated, the view being taken that once the partnering arrangements are in place, the client role is minimal.

Lack of effective leadership

The partnership team requires effective leadership from the beginning to the end of the project. The team leader does not necessarily have to be the client; it could be the contractor or a member of the supply chain. It is, however, the client's responsibility to ensure that effective leadership is provided.

Inappropriate partnering arrangements

One size does not fit all. There is no one model partnering arrangement that will suit all projects and all housing organisations. There is a wealth of experience that is there to be built on, but in the end there will always be the need to ensure that partnering arrangements are tailored to reflect the nature of each project, its objectives and the context inside which it is to be delivered. Failure to recognise this can result in arrangements being set up that impede, rather than facilitate, delivery of the project.

Failure to select the right partners

One of the most important tasks of the client is to select the contractor **and** supply chain partners who share the client's vision as to what the partnership is set up to deliver and

how the partnership arrangements are to work. Get this wrong and there is very little chance of the project succeeding.

Lack of understanding of partnering arrangements

One of the additional costs of partnering is the need to dedicate resources from the very start of the project to educating and training the partnership staff on how the partnering arrangements are to operate and what their roles are inside that arrangement. This is a process that needs to be extended and reinforced throughout the life of the project.

Failure to define objectives and expectations

There needs to be a clear definition at the start of the relationship of the objectives of the partnership, and the expectations each partner has of the others. Without a clear understanding of mutual objectives and expectations, effective partnership working is not achievable.

Failure to set baseline targets for performance and outcomes at the earliest opportunity

These need to be clearly defined, agreed with the partners and linked to key performance indicators (KPIs), with agreed systems for measuring and monitoring performance against these targets. This should include the year-on-year continuous improvement targets for the project. All too frequently these are left to be developed later, and later never comes. This is of particular importance if the contract payment system is linked to performance against target.

Failure to develop a partnership culture

Partnering involves radical changes in approach, organisation and methods of working. This requires matching changes in the culture of the project partners. Ensuring that the partnership culture develops in a way that supports the achievement of the aims and objectives of the partnership is a prerequisite to success. There are many examples of partnering arrangements that have failed because the staff operating the contracts, inside the partnership, have not accepted the concept of partnership working.

Lack of trust

The **full** benefits of partnering can only be gained once the team members have moved beyond the respect stage and have built up mutual trust in and with each other. Failure to do so means that much of the duplication of effort and systems and reduction in costs that partnering is designed to eliminate cannot be achieved. Likewise the radical changes in organisation and procedures and the movement to new methods of working that form the basis of partnering are likely to be more difficult to implement, because of this lack of trust.

Poor communication

Failure to set up and maintain clear lines of communication between all the stakeholders in the partnership can generate uncertainty and confusion, particularly in the early stages of the partnership when people are in a learning process regarding their roles and responsibilities. This inhibits the development of trust and partnership working.

Failure to control costs

Partnering contracts, by their very nature, involve a non-traditional approach to carrying out the work and many also incorporate non-traditional ways of rewarding the contractor partners, some based on open-book accounting, some based on performance against targets, etc. This means that appropriate systems need to be developed to monitor and control costs and provide assurance that the contract arrangements represent value for money. There have been many cases where there have been serious cost overruns because the systems put in place to control costs were not effective.

So, in essence, above all, partnering agreements need clients who understand them; there are three attitudes which seem to be prevalent that work against effective partnering:

- Many client staff are still stuck in the old mindset that their job is to 'catch out' the contractor and impose penalties
- The exact opposite: that once a partnering agreement is in place, the contractor is to be trusted
- That it is sufficient for the contractor to demonstrate or claim to be 'doing their best'. Housing maintenance contracts of whatever form are not based on effort, they are about agreed outputs for agreed payment.

A compounding misunderstanding is that the only breaches of 'contract' that can attract action are those foreseen and accounted for in the contract documents. Clients need to learn contract law. A breach is a breach and demands action.

In our experience it is less surprising that many partnering agreements are in trouble simply because they are not that – partnering agreements. In these circumstances it is difficult to understand what they are, but most of them are silent on the provisions of good partnering and most are barely understood by the people who construct them or have to manage them.

For some clients, and in particular those in a partnering relationship for responsive maintenance services, the move to partnering has delivered little more than a deterioration in service and a disproportionate increase in costs. Envisaged improvements in service design and delivery are in short supply or late, although, seemingly, commercial imperatives of the contractor are rarely missed.

The experience of contractors is not always a happy one, either.

In difficult circumstances, goodwill has the danger of becoming subservient to commercial reality. HQN is increasingly finding itself providing 'marriage guidance' services to partners where performance has nosedived and the softer aspects of the relationship have disappeared from view. As one forward-thinking client once said: *"I feel let down by the whole experience. I now realise that this has been little more than synchronised swimming with sharks. The contractor is more interested in maintaining margins and performing statistical voodoo to justify their financial claims than addressing the underlying issues"*.

Some commentators have stated that when the characteristics of housing maintenance-related partnering arrangements are compared with those in the automotive and retail sectors, it quickly becomes apparent that true partnering is rarely being undertaken in the housing sector. One major difference is integration of the supply chain and, despite what housing maintenance clients and contractors say, integration of the supply chain is generally poor. A number of the contractors currently in the market rely heavily on the use of sub-contractors to deliver most or all of the services, they play a major role in projecting and protecting the housing organisation's image, yet they are rarely if ever seen at operational meetings with the client. Supply chain integration is a fundamental component of an innovative and successful partnering arrangement. Without it, what you arguably have is little more than management contracting – at a price.

Another dimension to the appetite for partnering is the deterioration in the real economy and the deteriorating financial viability of some housing organisations. Tender prices are softening, new types of contractor are entering the market place and unit rates secured under two-stage tendering arrangements appear to be falling. A growing number of procurement consultants are advising against entering into long-term partnering arrangements simply because of the extent to which they have the potential to lock out alternative and more cost-effective options in a distressed market. We forecast that this trend will develop and for those organisations where financial viability is becoming an issue, and existing arrangements appear to be delivering poor value for money, recourse to the fine print and the lawyers will surely become a reality.

Open book or open season?

Open book is relatively new to the sector and is slowly becoming a feature in maintenance services.

One widely accepted definition is:

"A level of access to contractor's accounting data that would not normally have been available under a conventional procurement method."

"The level of access must be agreed on a case-by-case basis to reflect the circumstances of the partnering arrangements and the need for access to certain data to monitor performance or benefits arising."

Source: CBI – Partnering

The perceived benefits of open book for clients are reduced ‘back office’ costs, greater cost certainty and a better understanding of costs. For the contractor they include reduced risk, improved cash flow and identification of cost savings.

For both the client and contractor, open-book accounting should focus management effort on driving costs (but not quality) down.

The reality, however, is not always as rosy as this.

Client-side understanding of open book is currently a major issue. Open book requires a detailed if not forensic understanding of the definitions of cost, and more importantly an unswerving pursuit of cost reduction. In the wrong hands open book can create perverse incentives and provide the contractor with a golden opportunity to convert inefficiencies into hard cash.

It is for these reasons that an audit strategy must be agreed prior to ‘contract commencement’ and vigorously adhered to.

For those housing clients that were anything but inefficient prior to adopting open book, there is little evidence that the expected outcomes are being delivered.

Listed below are recent examples of where open book has found not to be delivering the expected outcomes.

- 1 Client enters into open-book arrangement with contractor and agrees substantial contribution towards office overheads. Contractor secures two further contracts and operates these from the same office as client 1. Clients 2 and 3 also agree substantial contribution of office overhead. **Result: clients’ contributions do not reflect actual cost and use and there is over-recovery of office overheads.**
- 2 Contractor submits monthly analysis of personnel used on the contract. Spot checks subsequently reveal that the levels of resources are overstated. **Result: over-recovery of direct costs.**
- 3 Client invoiced for work not done.
- 4 ‘Client swamping’: large number of contract supervisory and management staff attending progress and operational meetings during which they make little or no contribution. **Result: over-recovery of direct overheads.**
- 5 Procurement of sub-contract labour, plant and equipment not secured on most economically advantageous terms (eg, vehicles obtained on expensive ‘spot hire’ terms, rather than more cost-effective alternatives). **Result: increased cost to client.**

- 6 Claim made for increases in sub-contract labour rates. Subsequent investigation reveals that sub-contractors are not aware of the claim. **Result: potential unjustifiable increase in job costs.**
- 7 Material and sub-contractor labour rates agreed and inflated for client charging purposes. Contractor receives 'retrospective rebate' for difference between agreed and charged rates. **Result: client over-charged.**
- 8 Contractor makes end-of-year claim for costs not recovered during the year. Subsequent investigation reveals that only 23% of the original claim can be justified. **Result: potential for client over-charging.**
- 9 Contractor employed to deliver kitchen refurbishment programme secures sub-contract labour on trade basis. Jobs take an average of 13 days to complete with several days of inactivity on site. **Result: higher than average project costs, long turnaround periods and poor tenant satisfaction.**

Getting it back on track

Given the horrors of having to determine a contract or live with one not producing the expected outcomes, what are the steps to getting contracts back on track?

- Start with getting a clear commitment from the top of the contractor organisation. Always from the top, and always face to face. It is critical that the contractor organisation is personally committed at the very highest level:
 - We are going to work to make this work.Or
 - Let us start a planned divorce process.

If you have agreed to stay together for the time being at least:

- Work through the issues from both sides with an agreed mediator:
 - What are the issues?
 - Why are they issues?
 - What can be done?
 - Who needs to do what and when?
- Test the solutions
- Re-draft the contract to reflect the changes.

Overall conclusion

For HQN, the jury remains out. There are examples of where partnering is working and working well, but our experience is that clients are not always getting the delivery that was originally promised and contractors are not always getting the relationship and outcomes they had hoped for. Overall, costs are increasing and the evidence of pain share is much less visible than that of gain share.

The pressure placed on housing organisations to enter into partnering relationships has sometimes resulted in the wrong procurement decisions being made by the wrong organisation at the wrong time. This pressure, in our view, mostly applied by the Audit Commission and central government, has now been released and housing organisations are being encouraged to consider all options. Partnering is now being seen as a means to an end, rather than an end in itself. This can only be a positive and long overdue development.

It is not all the contractor's fault! Client-side capacity and competence needs to be developed in order to manage the relationship in a manner that does not put the delivery of VfM at risk. Regardless of who delivers the service, residents expect their landlords to provide effective leadership and continuously seek and secure enhanced levels of performance from the contractors entering their homes. Continuous improvement is patchy and those outcomes envisaged at the outset of the partnering relationship are not always being sought or secured.

Whilst the thinking behind partnering should be applauded and encouraged, the reality is that whatever procurement route is chosen, clients need to reinvigorate and regain their ability to client and keep a clear focus on the procurement outcomes for residents rather than the underlying process.

HQN is the largest independent housing training and consultancy company in the UK. Over 680 housing organisations nationwide subscribe to The Housing Quality Network which provides high quality briefings and workshops on a wide range of issues affecting the sector. We also run a number of specialist networks, provide bespoke consultancy and research, in-house training, interim management (The Pool) and executive recruitment (The Source) services and host a comprehensive programme of conferences and seminars.

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