

Risks and rewards

A recent *Civil Service World* round table debated how the civil service can better handle risk in supplier and contract management. **Stuart Watson** reports on a debate that found movement on an age-old problem

Paul Heatfield



As the Whitehall efficiency drive moves up a gear following the spending review, government is set to become more reliant on outside suppliers to deliver services. In his statement on 20 October, George Osborne said: “We should understand that all the services paid for by government do not have to be delivered by government.”

Outsourcing is high on the political agenda: in September Suffolk County Council announced plans to contract out virtually all of its services to private companies and social enterprises, while the government plans to hive off parts of the public sector as ‘mutuals’ that will compete for service-delivery contracts. So supplier management is set to make up a growing proportion of civil service work – but few would argue that all parts of government have to date been shining examples of best practice in the field.

One of the complexities of supplier management with which government struggles concerns the control and pricing of risk: who holds the risk after contracts have been signed, and how can risks sensibly be transferred? In the context of the localism agenda, and when ministers are urging public servants to be innovative in adopting new models of delivery, these questions over risk management acquire still more

Back row (l to r): reporter Stuart Watson, Matthew Kettel, Amanda Hillman, Francesca Annetta, Bob De Laney. **Front row (l to r):** Colin Macleod, Stephan Israel, Emma Newman, Gary Daines

urgency. Can a contract encourage service providers to experiment with new approaches, while limiting the risk of waste or failure? Can suppliers be managed in a way that allows local variation without leaving space for a collapse in services in a locality? And can government contracts dispense with rigid controls over processes and procedures, while ensuring that the risks to budgets or service users never become unacceptable?

It was to debate these issues that *Civil Service World*, together with information and business solutions provider Lexis Nexis, brought a group of civil servants together for a round table on how to manage risk more intelligently. The resulting lively discussion focused on the relationship between government departments and agencies, and their suppliers.

In particular, the panel considered whether risk can ever truly be transferred; the need to recognise the particular responsibilities of the public sector to manage data security risks; the value of commissioning skills and standardisation in procurement; the particular issues around small and medium-sized enterprises (SMEs) and risk; and how to develop a strategic approach to risk management.

How risk sticks to the public sector

Every contractual arrangement involves a transfer of risk. However, at the outset of the debate Phil Cholewick, head of supply chain management for the 2012 Olympics and a former commercial manager at the Home Office, raised a disturbing question that underlies the debate about outsourcing: can the government ever *truly* transfer risk to the private sector?

Cholewick argued that, even when the government believes it has passed risks across to a supplier, it still often ends up carrying the can when things go wrong. He recounted the story of how, when a supplier to the Home Office lost official data, the blame and the consequences were laid at the department’s door: “If we are transferring work to the private sector, then they have to take the legal risk as well,” he said.

This struck a chord with the panel, some of whom mentioned recent tabloid news stories about illegal immigrants working in government buildings: the

failure of outside contractors to vet their staff properly ended up causing reputational damage to some parts of government. “At the moment we are constantly worried about the next headline,” the Home Office’s Emma Newman revealed. “We are so risk-averse that it is to our detriment.”

Lexis Nexis’s Stephan Israel suggested that existing contract pricing reflects the real allocation of risk, and argued that if contracts were to transfer greater levels of liability, then suppliers would have to charge higher prices. Within the private sector, he argued, businesses regularly sign contracts that carefully define each partner’s responsibilities and their share of the project’s risks and benefits.

However, Cholewick said that agreements between the public and private sector will always have different characteristics from those between two private enterprises. “Businesses are required to make a profit,” he said. “We have a different set of objectives – delivering quality services at least cost. We need to work with suppliers to understand our respective positions.” He contended that few arrangements between government and private contractors could genuinely be called partnerships, and contrasted these contracts with commercial joint ventures, where risk and reward are shared.

Minimising the risks around data management

The public sector has special responsibilities to protect the personal data that it holds – and Amanda Hillman of the DWP suggested that these impose certain red lines on the civil service. She spoke positively about outsourcing service provision, claiming that few members of the public care about whether services are being provided directly by government: “They are not that interested in who wears the badge, as long as they get treated as they think they should be treated,” she said.

However, as outsourcing increases, she said, the department is coming into contact with more people unfamiliar with the protocols of government data handling. “People in the corporate world are very uninformed about the risks of using information. In two major contracts I have said: ‘Sorry, but we can’t

Around the table: the participants

Francesca Annetta, senior commercial accountant, Ministry of Justice

Phil Cholewick, head of supply chain management, 2012 Games, Government Olympic Executive, Department for Culture, Media and Sport

Gary Daines, corporate performance manager, Marine Management Organisation

Bob De Laney, director of news and business, Lexis Nexis

Amanda Hillman, data sharing and access management, Department for Work and Pensions

Stephan Israel, director of public sector, Lexis Nexis

Matthew Kettel, head of corporate risk management, HM Revenue and Customs

Colin Macleod, policy adviser, Department of Energy and Climate Change

Emma Newman, project manager, innovation and services, Home Office

Kevin Sorkin, managing director, Dods Government Division (chair)

go ahead', because the information risk was not being considered adequately," she divulged.

Moreover, said Hillman, the Data Protection Act does not allow the transfer of the risk of data loss or misuse to the private sector. In fact, she added, the DWP can find it easier to forge relationships with other departments, charities and social enterprises, which often have a more cautious culture over data management, than with private companies: "We have more shared objectives, and that works better for us."

Reducing risk in the procurement process

Cholewick admitted that the difficulty of managing risk in outsourced contracts does not stem solely from the failings of contractors: "The private sector is not as good at providing services as it claims, but the government buys things badly," he said. When government outsourcing contracts are badly drafted, he commented, the result is often that plans must be rejigged along the way – with knock-on effects on value for money. "We don't have the skills when it comes to buying," he argued.

The solution, he said, is for government departments to be clear about the outcomes that they want to achieve at the start of the tender process – something that happens too infrequently. Even when outcomes are clearly defined, civil servants sometimes fail to do enough cost-benefit analysis on the options over transferring risks contractually: it's a complex field, and one that rarely receives enough attention.

Confusion among senior managers and ministers can frustrate commercial teams, suggested Francesca Annetta from the Ministry of Justice, arguing that the goal of drawing up better contracts is sometimes compromised by high-level indecision. "The goalposts change, and sometimes suppliers suffer from that as well," she said. "Sometimes you are asked to achieve an objective by a certain time without any money or resources; or the objectives are not clear, which creates more chaos."

One way to reduce some of the expense and risk in contracting, suggested Cholewick, is to standardise contracts – private contractors can "plug into" a pre-existing framework in which risks and rewards are clearly defined. "You can't standardise everything, but for travel or stationery, standardisation can go all over government," he said. He added that, in this case, it is important for civil servants to develop the culture and skills to utilise standardised contracts.

Those skills are fast improving, agreed the panel; commercial capabilities across government have come on by leaps and bounds over recent years. Although civil servants are – as Hillman said – "only as good as the instructions they are being given", there was consensus that many of the big government departments now have very skilled contract teams.

Playing fair with the SMEs

The government has stated a desire to award 25 per cent of all contracts to small and medium-sized enterprises; but while the panel welcomed the strategy, the risk-management implications are not yet clear.

The existing tendering process is a barrier for many SMEs, said Israel: "The whole process of procurement is designed to push them away. It's long and protracted, and if the government is serious [about awarding contracts to small businesses] they will have to simplify the process," he argued. "The drive to look at smaller suppliers is great, but the risk becomes a real issue because nine out of ten don't stay in business very long." (See also news, p2.)

Management of contractors

When the discussion turned to managing the ongoing risks associated with government contracts, the worst-case scenario of employing illegal immigrants resurfaced. "In the headlines, it is not the cleaning company that has employed the illegal immigrant; it's the department. Why do we open ourselves up to these risks when we have no control?", sighed Hillman.

What's more, argued Cholewick, public bodies should be examining risks not only at the level of the principal contractor, but further down their supply chains. Where lots of risks are being managed by different organisations, there is a danger of dislocation of the kind seen at the Commonwealth Games in India, he said; there, lifts proved to be too small to accommodate the stretcher carrying a woman who

collapsed during the opening ceremony.

Still, said Newman, the Home Office is getting much better at managing its suppliers – largely thanks to training programmes in how to manage contracts. "A historical problem was that people were doing a bit of everything," she said. "A lot of people who categorised themselves as buyers were actually contract managers, so we are educating them about how to get the best value out of the contract."

The department is also trying to be less prescriptive about how contracts are delivered: "We need to have more flexibility designed into our contracts so that there is flexibility to manage the risks that arise from change," said Newman. This will be crucial if providers are to be encouraged to innovate – but suppliers will always be reluctant to agree contracts when they fear that contract managers are likely to insist on frequent, disruptive changes to delivery methods. It's difficult to get contractors to commit themselves to unquantifiable future changes, said Cholewick: "In the private sector they will say: 'That [possible future risk] is a risk for you.' Whoever takes on such risks is holding an 'open chequebook', he said.

Strategic risk management

With the sweeping away of central government's systems of command and control, future contracts are likely to revolve heavily around outcomes rather than methodology. In the past, suggested Gary Daines of the Marine Management Organisation, a fixation with the wording of contracts has weakened government's ability to achieve its aims. He'd like to see a culture that allows contract managers to focus on the objectives to be achieved, not just on the terms of the contract; civil servants should be allowed "to say that the contract has been met, but [the outcome] wasn't what we wanted."

Alongside a focus on outcomes, suggested Newman, the government should develop a more strategic approach to risk – and here, there is much to learn from the private sector. "While in the private sector you can be more forward looking, the public sector is more reactive," she said. "We are good at

dealing with low-level risk, but less experienced in creating over-arching risk policies and looking at the risk we are prepared to take on going forward." This, she believes, is "because we don't have the time."

Newman added that the feeling of being embattled by the media contributes to the weakness of high-level strategy by focusing attention on small issues that have the potential to create disproportionate damage to the department's reputation. "The issue is dealing with the risk we have currently, and still dedicating resources to the future," she said.

Cholewick suggested that the reason why the private sector is better at long-term risk planning is that, whereas private companies' backers expect them to plan over a 15-20 year period, the natural cycle of government is three to four years. New ministers coming into a department can make major changes even within that comparatively short timescale, he said.

However, Lexis Nexis's Bob De Laney countered that businesses are also affected by new legislation for which they cannot plan in advance. He cited as an example the Bribery Act: many of his staff are working hard to advise client companies on its implications for their own strategic plans, he said. His colleague Israel added that, even in FTSE 100 companies, plans are frequently scrapped every three years or so as new chief executives are appointed.

Chairman Kevin Sorkin, managing director of Dods government division, asked a crucial question: are civil servants and their private sector partners engaging with the strategic risk management processes that managers are trying to put in place? But Israel was doubtful: "People may not be showing the same level of diligence to applying the long-term strategy as they do in risk-managing the tender process," he said. "Some people are really good, but we see vast differences."

Despite all the obstacles, many bits of government are trying to think long-term – and the DWP, Hillman revealed, is developing a risk-management template to prompt staff to look at risk in a more strategic way. "We are trying to make sure the decisions we make today are future-proofed," she said. "And that leads you to consider the architecture of 10 years ahead." ■

Clockwise from top left: Emma Newman, Stephan Israel, Amanda Hillman, Phil Cholewick



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