

SITRA

briefing

SUPPORTING PEOPLE AND THE CONTRACTUAL WEB 2003



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December/January 2003 issue 157



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Supporting People and contracts

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- *Supporting People* is a new Policy and Funding Framework for supported housing. With effect from April 2003, it brought together 'support' charges previously funded out of Housing Benefit (HB), Supported Housing Management Grant (SHMG) Probation Accommodation Grants Scheme (PAGS) and DSS Section 30 grant aid into one pot...

- These new 'support' monies are used by local housing departments, social services and probation services to jointly commission services.

- This new system was preceded by a set of transitional housing benefit regulations designed to stabilise existing provision by enabling certain support services to be paid by housing benefit and allow an accurate calculation of monies due to be transferred from HB. Post- April 2003, HB is available to cover narrowly defined 'housing' costs alone.

- All of this affected both sheltered and supported housing

- The funding changes meant that providers of supported housing and sheltered housing services entered into new contractual arrangements with the Supporting People Administering Authorities.

- Contractual Arrangements between Registered Social Landlords (RSLs) and the agencies they work in partnership with changed as a result of the funding changes.

- The purpose of this publication is to explain the nature of the contractual arrangements that exist between the parties involved in commissioning, providing and receiving *Supporting People* services.

The range of possible relationships between these various parties is complex. Some, but not all of the possible links are contractual - in other words, they form legally enforceable commitments. Both parties to the contract are legally obliged to respect the terms of the contract they have entered into.

Other agreements are simply mutual agreements or statements of intent around co-operative working. It is important that all parties understand the differences between the two and, especially, the nature and extent of the contractual commitments.

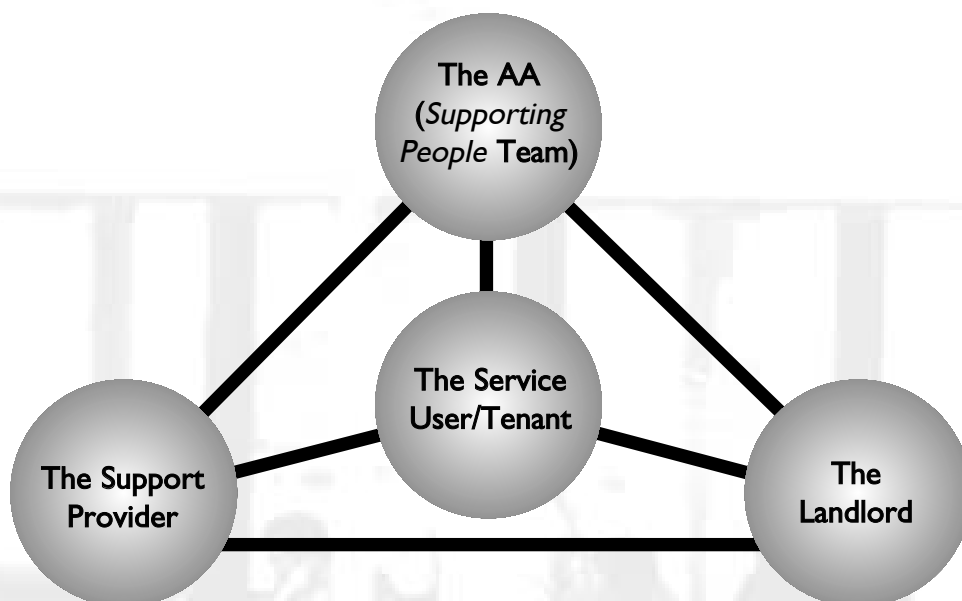
In law a contract exists when four things happen:

- there is an intention to create legal relations
- an offer is made
- the offer is accepted
- there is a valuable consideration for the transaction

Consideration simply means something of worth - a transaction at nominal value, through goods and services to an amount of money.

Introducing the main players

Supporting People is the biggest ever administrative reform of the funding and regulatory structures that govern supported housing and related support services. As such it affects the web of contractual and other partnerships that tie together the various parties involved in the sector. There are almost always a minimum of three such parties: the commissioner of services, the landlord and the service user. Often there are four, as another organisation directly provides support to tenants or service users.



The Administering Authority (AA)

This is the Local Authority that formally issues a contract on behalf of a Joint Commissioning body to fund support provided by the support provider.

The Landlord

The majority of supported housing is delivered in rented properties specially designated as accommodation where support is also provided. Examples include hostels for homeless people, a block of sheltered housing for the elderly, or self contained accommodation for people with mental health needs. Sometimes the landlord provides the support as well as the housing

management service.

The Support Provider

This is the organisation that delivers the support to the service user. In many cases, the Support Provider may also carry out housing management tasks on the landlord's behalf, acting as managing agent. This is a common arrangement in supported housing for non elderly groups, but much less common in sheltered housing for older people. The service users receive both housing management and support services from the staff, but the housing service is delivered on an agency or sub-contract basis for the landlord, whilst the Support Provider has been issued a contract for support from the AA. There are even examples

where the landlord holds the support contract from the AA and then sub contracts both housing and support function to another party.

The Service User

The service user receives the support and may be required to enter into a contract obliging them to pay for it. They are likely to be tenants or licensees of a landlord and will have an occupancy agreement that obliges them to pay for accommodation and services. In some circumstances, the occupancy agreement will include an obligation to pay for support. However, in short term schemes there is no necessary contractual obligation on the user to either pay for or indeed even accept support.

The Occupancy Agreement

The majority of *Supporting People* services are provided to people with support needs who live in rented housing. All rented housing is let on the basis of a contract between the owner of the property and its occupier. Even if nothing has been put in writing between two parties either a tenancy agreement or a licence to occupy will exist.

More commonly, in the social housing sector there will be a formal written agreement signed by both parties. This can be a licence agreement or a tenancy agreement which gives the occupant greater security of tenure, depending on the particular situation. The Courts and regulatory bodies such as the Housing Corporation take such a close interest in the circumstances when different kinds of licence or tenancy can be used. But whatever kind of occupancy agreement is used, they are all, in legal terms, contracts of one sort or another.

There is a dense body of housing and case law that determines what kind of contract should exist and how both landlord and tenant may compel the other to respect the terms of the contract. The contract sets out the responsibilities and rights of the landlord and the occupant that are legally enforceable.

Tenancies and Licences

The central content of any tenancy or licence is the understanding that an individual may occupy the landlords' premises for a payment of rent for the accommodation. Many tenancies or licences cover matters that go beyond this basic right to occupy. For instance, many agreements in supported housing, or indeed the private rented sector, include an obligation on the landlord to provide furniture and on the occupant to pay a charge for this. Such charges are also legally enforceable parts of the basic contract.

In the context of funding supported housing, the legal framework governing relationships between landlords and occupiers has two key implications:

- This *legally enforceable obligation to pay charges* is the key to Housing Benefit (HB) entitlement. HB is a form of individual subsidy available to cover housing costs that exceed a person's ability to pay. It is only payable against certain specified costs that the occupant is legally obliged to pay as a condition of occupation. So two council tenants on the same estate might both hire a garage from the council. Perhaps the first garage is structurally part of the house rented by tenant A and is included in the tenancy agreement. In this case, HB would pay for its cost. Tenant B, on the other hand, might rent a lock up garage at the end of the street under a completely separate agreement to their tenancy. HB would not pay for this second garage.
- The HB regulations also contain restrictions on the kinds of services for which subsidy is available. Until April 2003, HB was available to pay for a range of activities described as '*General Counselling and Support*'. All monies paid out by HB for such support services until this date were transferred to Administering Authorities to form the bulk of the *Supporting People* pot. From that date, HB was no longer available for such services, even if they remained part of any

“All rented housing is let on the basis of a contract between the owner and the occupier...whatever kind of occupancy agreement is used, they are all, in legal terms, contracts of one sort or another.”

licence or tenancy. The money to pay for such services had to come from somewhere else - generally the *Supporting People* pot, or the service user's own resources.

Landlords and Agents

A landlord does not have to deliver all the services specified in the occupancy agreement themselves. For example, landlords are legally obliged under the terms of the occupancy agreement to maintain the properties they let to tenants. They often engage specialist firms to actually do the work rather than doing it themselves. The landlord, however, remains contractually liable to the tenant to ensure that these services are delivered.

The situation is no different in supported housing where a third party (“managing agent”) delivers the housing management service. The primary contract for these services remains that between landlord and occupier. In strict contractual terms, the third party is simply providing services on behalf of the landlord to the tenant. For this they receive a fee - normally in the form of retaining a portion of the rent and other charges they collect in the landlord’s name.

This kind of arrangement is particularly important in housing association stock. The express permission of the Housing Corporation is required for any association to lease to anyone other than another RSL. In contrast, both councils and private landlords can lease property to any kind of organisation. In most cases, a leaseholder can issue a tenancy or licence to the occupier in their own name.

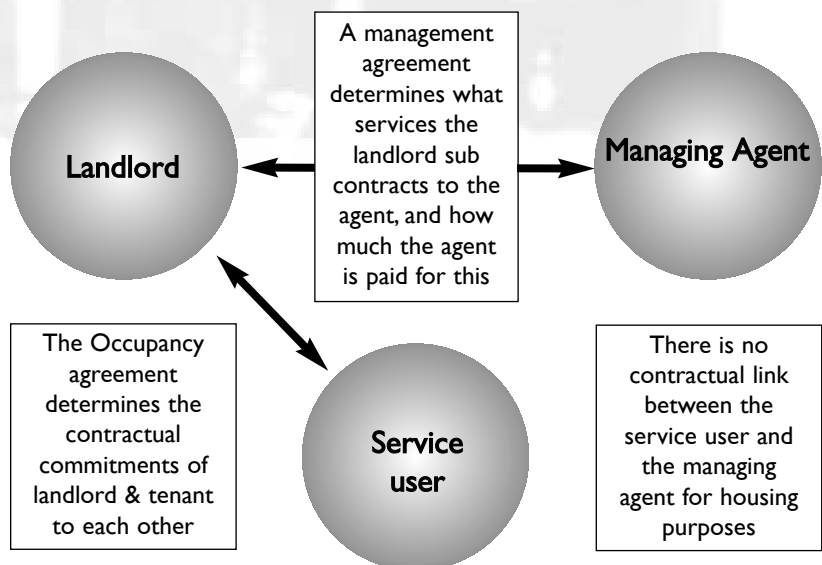
In housing association schemes managed by support providers, on the other hand, the occupancy agreement is always between the ‘owning’ landlord and the service user. Furthermore, housing associations need to take a close interest in the activities of their agents as they are formally accountable to the Housing Corporation for the *standard* of housing services offered their tenants.

Before *Supporting People* the practical flows of income often disguised the true contractual nature of landlord-agent relations in the housing association sector. Rent and service charge income were then, as now, collected directly by the agent, and largely retained. The Housing Corporation paid revenue grant direct to the housing association who in turn passed on some but not all of it to the agent. The portion of grant retained by the landlord was commonly referred to as the “RSL management charge” so it could appear that the Agent was paying the landlord for services rendered. Now that SHMG has been incorporated into *Supporting People* pot and is mainly paid directly to support providers the basic relationship is much more transparent.

VAT

The letting of housing is exempt from VAT. The supply of management services is not. So, other things being equal, bodies acting as managing agents would have to charge landlords VAT for their services. In supported housing, however, other things are rarely equal. Where the managing agent has a charitable purpose, or is a public body, and also delivers support it is possible to argue that the housing management service is being delivered as an ancillary service to the support. As almost all *Supporting People* funded services are VAT- exempt this means the housing service is similarly exempt in these circumstances.

Landlord, Managing Agent & Service User: the Contractual Links for Housing



Contracts and *Supporting People*

A model Interim Contract between AA's and providers was produced by the ODPM during preparations for *Supporting People*. Two main variants were produced:

- a block subsidy contract which applies to services where service users may be charged for support
- a block gross contract which mainly applies to services where service users are not charged for support

Under *Supporting People*, the default assumption is that people receiving support services will be charged for them. The exceptions to this are:

- schemes which offer short term support, and
- individuals who receive full or partial HB.

Some people who do not qualify for HB will still qualify for full or partial subsidy in paying for support under the Fairer Charging regime.

Block Gross Contract

In short term schemes, providers do not need to collect any charges for support. So they can exclude any previously existing reference to such charges from their occupancy agreement. It is equally acceptable to simply leave the occupancy agreement unchanged and set the charges specified for support to zero. In legal terms, the result is the same: there is no contractual obligation on the tenant to pay for support.

The support is paid through a block gross contract. The AA enters into a contract with the provider to cover their agreed support costs, initially as calculated in the original transfer of monies into *Supporting People* in April 2003 or as subsequently agreed at scheme review stage.

In a few areas all local *Supporting People* services are free but the ODPM assume that charges are being collected and reduce the value of the *Supporting People* grant to the local authority accordingly.

Block Subsidy Contract

Recipients of long term support do normally have to enter into

a contractual obligation to pay for the support they receive. There are three ways in which this can happen. Each of these different contractual obligations on the service user generates a different form of contractual subsidy arrangement for the landlord and/or support provider.

| Contractual Basis of Service user's Obligation to Pay for Support in Long Term Schemes | Contractual Implication for Landlord/ Support Providers |
|---|---|
| <p>In many long term schemes, especially sheltered housing, the tenancy or licence will continue to include an obligation on the service user to pay for the support they receive. So the default position is that the user has to pay - unless they qualify for exemption or otherwise attract subsidy under the Fairer Charging arrangements.</p> | <p>The AA will issue the landlord a block subsidy contract for <i>Supporting People</i> services. This contract commits the AA to paying subsidy only for those service users who are exempt from charging, or who otherwise qualify for total or partial subsidy under the Fairer Charging Means Test. Individuals can move in and out of exempt status, and in and out of qualification for Fairer Charging subsidy. So a block subsidy contract implies a regular and detailed exchange of information between landlord and AA. All subsidy payments must be credited to individual rent & support accounts.</p> |
| <p>The service user may be required to enter into a support contract with the support provider, completely separate from their tenancy or licence.</p> <p>The service user would remain under a legal obligation to pay but this obligation could not be enforced using the provisions of housing law.</p> | <p>Again, the provider would receive a block subsidy contract, with all the same implications as if support was being charged for under the tenancy. Because the obligation to pay for support was non-tenancy based, the block subsidy contract could be issued to someone other than the landlord - say a local mental health group managing a scheme belonging to a housing association.</p> |
| <p>The service user may be required to enter into a support contract with the Administering Authority completely separate from their tenancy or licence.</p> | <p>The provider would receive a block gross chargeable contract. The AA itself would be responsible for identifying charge payers and collecting charges.</p> |

The relationships

The relationship between landlord, support provider and Supporting People Administering Authority

Supported housing is so-called because housing and support have traditionally been commissioned as a unified service. *Supporting People* makes it much easier to separately commission these services. Nonetheless, in many cases, it is in the interests of the users to receive these services in a unified way.

Where housing and support are jointly commissioned, two completely different parties are responsible for commissioning the two services. At least in the housing association sector, neither landlord nor AA can devolve their responsibilities to the other party. RSLs can not lease property to non-RSLs. If a landlord hold the support contract they cannot sub-contract these responsibilities to anyone else without the express agreement of the AA.

Even where different parties provide housing and support, or where the support services is only temporarily attached to particular properties, it is in the interests of everyone involved to ensure that there are clear linkages between both services.

In the run up to *Supporting People*, ODPM funded the production of model sets of arrangements to cover this complex range of situations. This work distinguished four different ways in which landlords, AAs and support providers might work together.

Each of these arrangements demands a different range of contractual and non-contractual agreements between the various parties.

Non -contractual agreements cannot be legally enforced. In essence, they are no more than statements of intent as to how the various parties will work together. This may seem relatively trivial compared to

contractual undertakings. But they are essential. An analogy may make this clearer. If the various contracts required in the housing and support fields can be compared to the different parts of a car engine, then the non-contractual agreements are the engine oil. They lubricate the system and allow it to work smoothly.

FLAP provided models for three such non-contractual agreements:

- A Joint Working Protocol - this is a three way agreement between AA, landlord and support provider which sets out how all three parties are to deal with commissioning of new services, monitor and review existing services, share information and deal with crises.
- A Service level agreement - this sets out how support providers

and landlords will work together in situations where the support provider does not carry out the housing management.

- A Floating Support Agreement - this is similar to the service level agreement but is intended to cover floating support schemes where there may be a variety of different landlords. It sets out how the support provider and landlords work together with tenants of a floating support service to protect confidentiality, share information and manage risk.

The model documentation is known as the FLAP agreements and is available on the spkweb, as well as the National Housing Federation's website www.housing.org.uk and SITRA's website www.sitra.org.uk

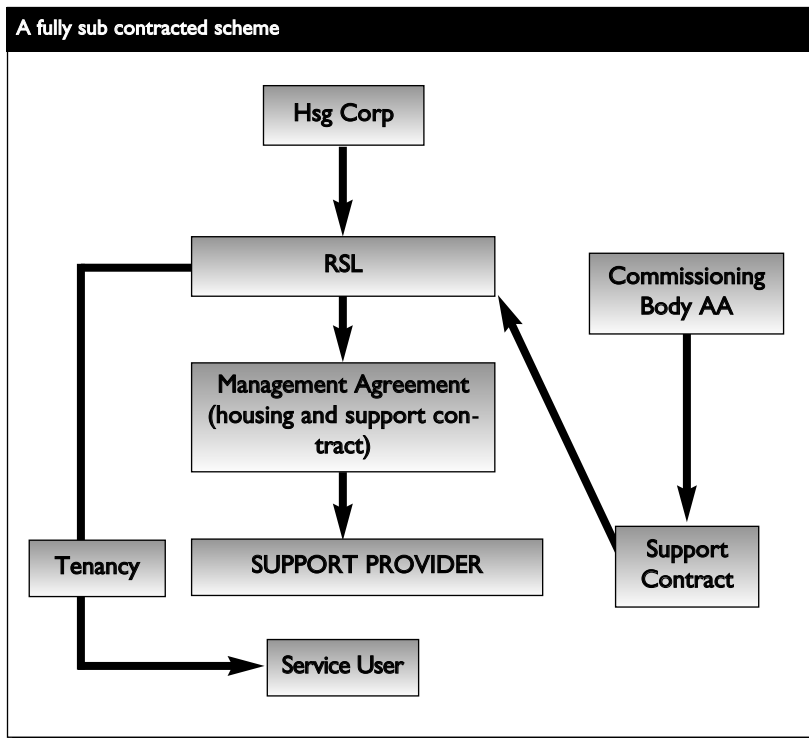
| Model | Description |
|-----------------------------|--|
| Fully Sub-contracted scheme | The AA awards the support contract to the landlord who in turn enters into a sub contract or management agreement with the 'front-end' support provider. Under this model, the support provider is the landlord's managing agent in respect of both housing and support. |
| Agency managed scheme | The AA awards the support contract directly to the support provider, who is simultaneously engaged as a sub-contractor by the landlord. Under this model, the sub contract or management agreement only covers housing matters. |
| Separately managed scheme | The AA awards the support contract for a particular scheme to the support provider - but the landlord does the housing management themselves. |
| Floating support | The AA awards the support contract to a non-landlord support provider who delivers services to users with a variety of landlords - or who might even be owner occupiers. |

Support Provider as Housing Manager

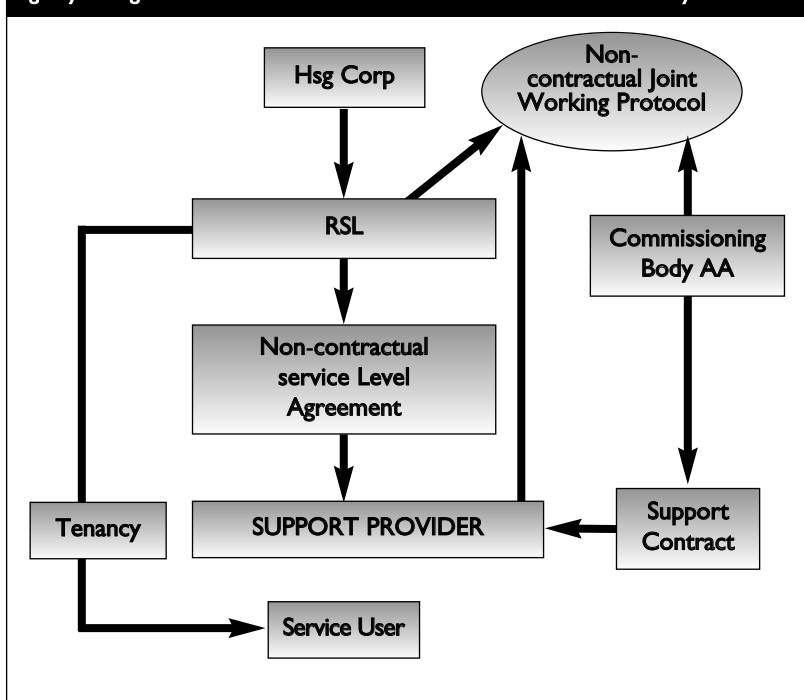
Fully Sub contracted Schemes

Before *Supporting People*, landlords, especially RSLs, were the legal owners of most of the funding that allowed the field to operate. So, for many purposes, support providers working in RSL stock were managing agents. In many cases this arrangement worked well and some RSLs and agents have agreed that it should continue under *Supporting People*. This means the landlord holds the support contract.

The downside of this is that it may well imply a double level of monitoring. The RSL is monitored and held accountable for its support contract by the AA - but the RSL must also monitor the agent for both its support and housing activities. Clearly, this might prove more expensive than any AA might wish.



Agency Managed Schemes: main contractor & sub contractor simultaneously



Agency Managed Schemes

In agency managed schemes, the support provider has a double status as main contractor for support, and as the landlord's sub contractor for housing functions.

This raises a range of questions around how these two contracts interact. It means that both landlord and AA have agreed what is needed is a unified housing and support service - but also that both are dependent on the other to continue to commission the particular support provider. If, say, the landlord decided that the support provider wasn't up to the job and refused to continue to sub contract housing management to them the AA would be left in a very difficult position. The opposite also applies. So the Joint Working Protocol becomes vital for all three parties.

The finances of a unified service

RSL Agency relationships developed in the first place because of the need to work together making use of the expertise of both parties. The only thing that *Supporting People* changed was the access to revenue funding. In many supported housing projects there remains a strong case for providing a unified housing management and support service to occupants.

This is straightforward enough where it is the landlord themselves that provides the support: the AA simply issues the support contract to them. It gets more complicated where a support provider is involved in delivering a unified service. Two contractual options are available.

In a fully sub contracted scheme, the support provider acts as the landlord's agent for both housing and support services. The fee for providing support is largely determined by the size of the primary support contract issued to the landlord by the AA, minus any monitoring ~ or contract management costs incurred by the landlord. In an agency managed scheme, the support provider directly holds the support contract and is only a sub-contractor for housing purposes.

In both situations, the question of how to calculate the appropriate fee payable to the support provider for housing management services needs to be resolved.

Rent restructuring

This is complicated by the coming of rent restructuring. More or less at the same time as the introduction of *Supporting People*, the Government introduced a new system for controlling rent levels in social housing. Rent restructuring is based on the idea of imposing an essentially national system of pricing, irrespective of local costs. Housing associations and Councils have to prepare ten year rent restructuring plans to reach 'target rents' in individual properties, including agency managed properties.

The general expectation, with many local variations, is that rents will rise in the South of England and fall in the North. This has profound implications for the nature of the financial relations between housing associations and any support provider that also provides housing management services in RSL stock.

FLAP identified three potential variants for agreeing the appropriate housing management fee payable to the support provider in these circumstances.

Variant A

The management agreement specifies the price that the RSL is prepared to pay for the basic housing management services carried out on its behalf by the agent - say £x per week. Everything over and above this figure would have to be paid over to the RSL

Variant B

The management agreement specifies the costs incurred by the RSL in fulfilling its landlord and monitoring responsibilities and require the agent to hand over these costs; everything else is retained by the Agent as its fee.

Variant C

The management agreement specifies a standard percentage of the rent that is retained by the Agency as its fee; everything else is passed over to the RSL.

Advantages of the different approaches

The interests of different parties in securing an agreement based on any of these principles can differ. It is not true that one kind of arrangement

“It is not true that one kind of arrangement always benefits landlords and disadvantages support providers or vice versa.”

always benefits landlords and disadvantages support providers or vice versa. Quite often, it will be the local effects of rent restructuring that will make the key difference

Variant A - the RSL sets a price it will pay to support providers for housing management services. This is to the advantage for RSLs in areas where rent are likely to rise as it suggests that they will attract a rising income stream. Support providers acting as managing agents for housing management purposes won't share in this increasing income, but they will have a protected income (at least if inflation doesn't eat it away). Depending on the RSL costs and the fee agreed for housing management, this could mean surpluses for RSLs on Supported Housing. This option is likely to be less of an advantage for RSLs in areas where rents are due to fall.

Variant B - the RSL deducts its costs and leaves the residual element of the core rent as the agency fee. This could be an advantageous for managing agents in areas where rents might be generally expected to rise. It is less generous in where rents might be expected to fall.

This model would be unlikely to work well for support providers in schemes with very high costs, because of higher than standard maintenance costs or a high private finance component. Little might be left as a housing management fee. Indeed, there will be some projects where the landlord's costs are higher than the total rental income. Unless the landlord was prepared to pool such costs there would be no money at all to engage a support provider as agent. If RSL costs fluctuated from year to year this could make it difficult for support providers to plan and manage their budgets.

Variant C - the housing management fee is set at a standard percentage of the core rent as defined in the RSLs rent restructuring plan: this has been described as *'sharing the pain and*

sharing the gain'. Both parties feel the financial affects of the implications of rent restructuring directly.

“Rent restructuring has profound implications for housing associations - support provider relations.”

Use of this model implies some pooling of costs by both the RSL and, assuming they are large enough, by the support provider (If rent restructuring divorces costs from price generally, then splitting a restructured rent proportionately must mean both the RSL and Agent will sometimes have higher or lower costs than the amounts actually received on any particular scheme).

Calculating the fee

The examples outlined above do not specify how the price of housing management is calculated or what the percentage split of the rent should be. In principle, it is reasonable to expect that the two parties will have regard to the other's costs in terms of providing the level of service required. The RSL in particular should bear in mind the effect of proposals that adversely affect the financial viability of the support provider. The support provider may find it helpful to check the RSL's own general needs housing management

costs, as recorded in their returns to the Housing Corporation. These figures can be found on the Corporation's website.

Pooling

All of this raises the question of the issue of pooling property costs within RSLs. Historical funding arrangements mean that, in the majority of cases, supported housing schemes have operated with 'stand alone' budgets. Rent restructuring and the changing funding arrangements under *Supporting People* may mean that costs can only be covered by pooling property costs such as mortgages, maintenance and insurance. The size of the pool may sometimes become the key issue. There may be a choice as to whether such costs are spread across all an RSL's stock, including general needs; pooled merely within the supported housing segment of that stock or restricted to stock managed by a particular agency on behalf of the particular RSL. As preparing a rent plan is clearly the responsibility of the RSL with the interest in the land (i.e. the freehold or a lease of 21 years or more), such decisions can only be taken by that RSL.

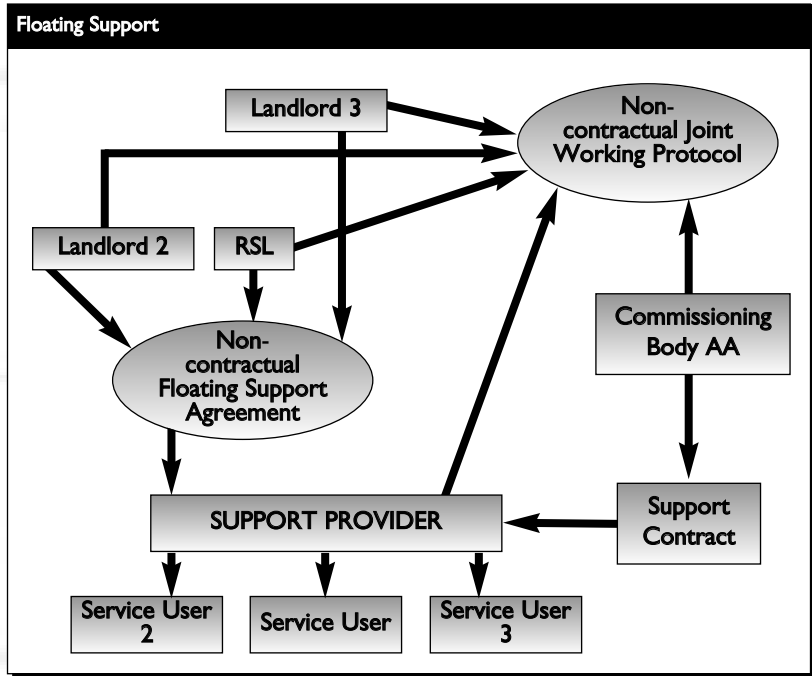
No magic wand

Pooling will not work to the advantage of all support providers acting as managing agents, particularly those managing schemes with no private finance. It would imply that, for the first time, rent payments on schemes they managed were contributing to mortgages held on other properties. Nonetheless, in some areas, such pooling may be the only way to manage the effects of rent restructuring in the interests of all parties.

Support & housing being separately delivered

Floating Support

Floating Support schemes commonly work with so many landlords it is unrealistic to expect the support provider to enter into a detailed specific service level agreement with each of them. The floating support agreement is a simplified version of a service level agreement setting out when the landlord and support provider will work together to ensure services can be provided to the tenant. This agreement could form part of the Joint Working Protocol but could be a separate agreement between participating landlords and the support provider.

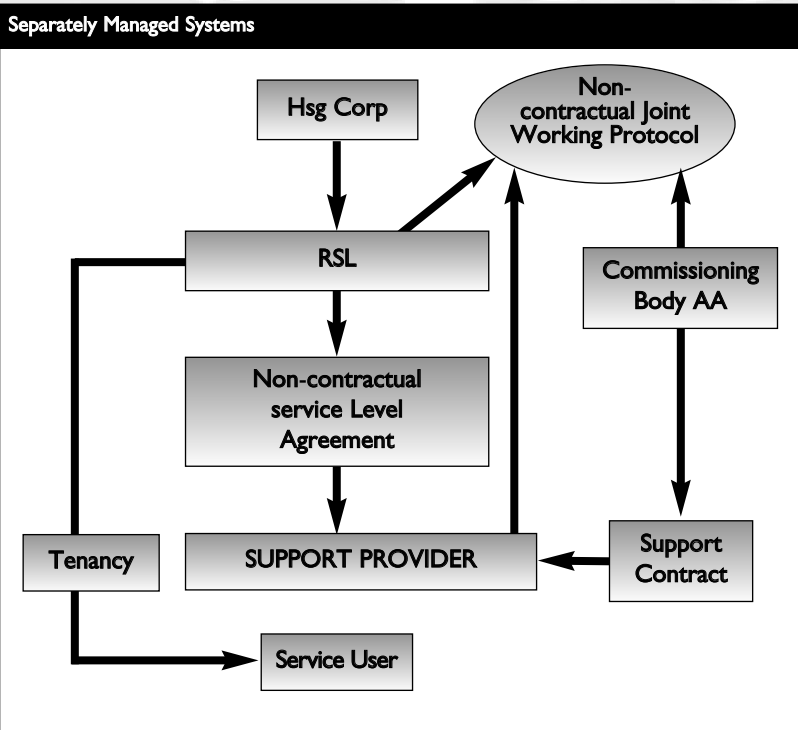


Separately Managed Scheme

There is no need for the body carrying out housing management functions to be the same

organisation that provides support to the service user. Indeed, many people think there are advantages if these

separate. They point out it is hard to simultaneously support a vulnerable individual and pursue them for rent arrears.



But even where there this model applies, landlord and support provider need to agree how they will work together. This service level agreement is not a contract. It needs to set out the way information will be exchanged, how confidentiality will be respected and, crucially, how selection and allocation procedures will work.

There may also be a need for a side contract, to deal with office hire etc. There are technical difficulties to be ironed out in moving from a management agreement to a separately managed relationship - the provision of furniture and services, how to treat current arrears, move-on etc.

Key but not contractual: The Joint Working Protocol

The Joint Working Protocol

Supporting People has brought new challenges for partnership working between the stakeholders. Some of the arrangements between the parties are very complex. It is vital, therefore, that all of the parties involved are clear about commissioning, liaison arrangements, communication, monitoring, risk management and issues relating to the practical delivery of services on a day to day basis.

In addition to the arrangements between landlords and support providers, the need for a 'joint working protocol' between the different parties involved in the scheme, has been identified as essential for supported housing schemes. This should involve the RSL, the Support Provider/managing agent and the *Supporting People* Administrative Authority as key stakeholders in the partnership.

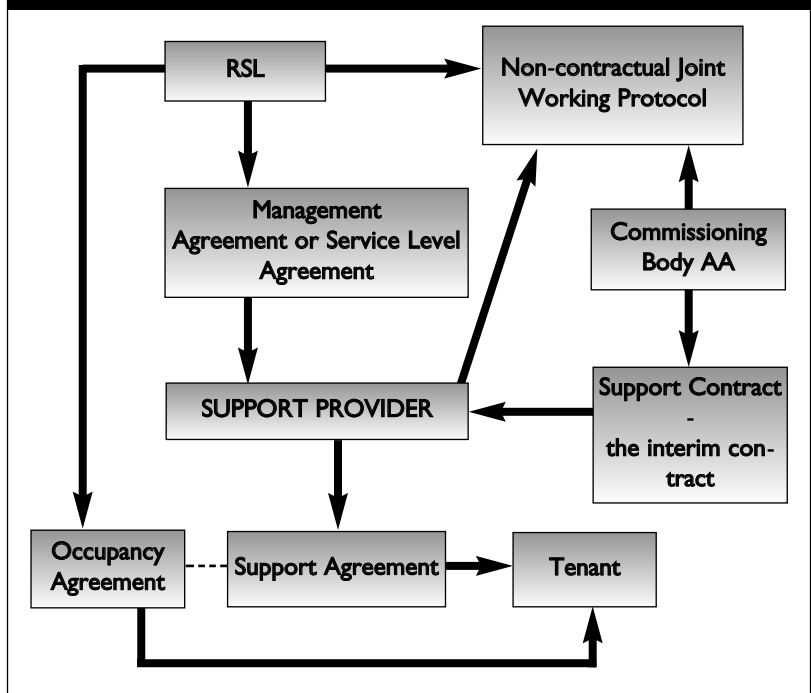
It is not intended that The Joint Working Protocol should be a legal contract. Separate contractual arrangements will be set out in agreements between the RSL and Support Provider and in contracts with the *Supporting People* Administering Authority. A joint working protocol will compliment contractual and commissioning arrangements under *Supporting People* to ensure good joint working, good practice and continuity of service.

The extent of co-operation required between the parties will vary according to the model of service delivery. The purpose of the protocol will be:

- to clarify responsibility for delivering and monitoring services
- to agree on how to deal with potential conflicts of interest
- how to address areas of concern
- to manage risk
- to ensure that all parties are acting in order to protect the interests of residents

“The Joint Working Protocol ensures good joint working and helps all parties manage risk.”

The Web of Agreements



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Do you need someone to organise a conference for your organisation?

In the last twelve months, SITRA have organised and run over thirty conferences covering all aspects of emerging supporting housing policy and practices. This has included coordinating many of the ODPM's rolling programme around *Supporting People* as well as cross authority events, inclusive forums and provider events. *Why not let SITRA plan, organise and deliver your event.*

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SITRA

Approximately 580 organisations are members of SITRA country wide. Members have access to all SITRA's services and assist in the formulation of policy for the agency.

If you would like to join SITRA please contact the Membership Administrator on 020 7793 4711 and ask for an application form. SITRA provides the following services:

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SITRA provides telephone advice and answers correspondence on all matters relating to the development and management of specialist housing services.

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SITRA publishes this Bulletin on a monthly basis as well as regular information leaflets, briefings and publications.

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SITRA offers a comprehensive training programme and can also develop in-house training to meet the particular needs of supported housing projects.

Consultancy

SITRA will work with an agency on a consultancy basis to resolve a particular issue, either on a long- or short-term basis.

Policy

SITRA runs seminars on a variety of policy issues. SITRA works with local and central government to ensure that the needs of its members are recognised, understood and met by resource providers.

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Office of the Deputy Prime Minister



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SITRA believes all individuals have a right to the housing, support and personal care services appropriate to their needs, delivered according to their own preferences. Such services should be easy to access, of the highest possible quality, and equitably reflect the diversity of user needs.

To this end, our mission is to:

- Seek to influence those with the power to affect the quality and affordability of housing and support provision**
- Provide policy makers and practitioners with accurate, up to date and timely information, guidance and practical support on relevant technical and policy issues to maximise the chances of people with housing and support needs receiving an affordable, high quality service**
- Contribute to the baseline professional standards that typify the sector through the provision of training**
- Promote best practice in the design, commissioning, delivery, monitoring and evaluation of services**