
ZEN AND THE ART OF CONTRACT MAINTENANCE *

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“Contracting is con-tricking” Over the past 15 years I have marched up and down more streets that I care to remember in both hemispheres waving placards saying something along those lines. After a metre or so of shoe leather, and five years or so working under contracts of some kind or other, I began to look behind the slogans and wonder what exactly *is* a contract ? Do they have *any* redeeming features ? My conclusions form the basis of this article.

Fundamentally, I believe that contracts cannot be separated from their context. Philippa Howden-Chapman’s article deals with the social, political and economic context, and there is little I would want to add to her excellent analysis. There is in addition, another, more personal, context. Our attitudes towards contracts, and our reasons for using contracts, I believe significantly determine how they work in practice. In particular, the current motives behind contracting in New Zealand are heavily influenced by two factors; a preoccupation with solutions, and a belief in the power of structures. Bear with me for a moment while I discuss these two factors; they become important later on.

Solutions, solutions

Let me first deal with the issue of solutions. New Zealand has a very strong orientation towards the solution. As a consultant, I am usually asked to answer the question “what” or “how”, rarely “why”. Indeed in some cases clients get very twitchy when I begin to delve into some of the darker recesses of the puzzle whose pieces I am about to play around with. No, I am hired to find a solution, not to confront the client with yet more problems. Yet, in the absence of a clear analysis of the puzzle, solutions, no matter how clever, can be built on pretty shaky ground. I often hear the phrase “Lets get on with it” but I am often left wondering what “it” actually is.

Structures, structures

Secondly, there is in New Zealand an extraordinary faith in structures. In particular, a very strong belief that changing structures can solve quite deep problems relating to processes and values. Witness the recent debates in New Zealand over the State Owned Enterprise legislation, electoral reform, Tomorrow's Schools, and of course the changes to our public health system. The focus is principally on structure. What was the reaction of a recent client when confronted by the last decade of the 20th century ? It set up a committee to look at the organisation’s structure ! Rather than tackle the issues of processes or values head on, we set up new structures and hope they will do it for us. Restructure has been the clarion call for the past seven or eight years; we constantly restructure, yet are constantly disappointed. And why are we disappointed ? We are disappointed because although structures do *influence* process and values, they cannot fundamentally *resolve* process problems or value conflicts. They are also much less influential than we think they are. I remember in my years as a community worker, I could bring about change whatever the structure, but begin to constrain my processes, or fundamentally restrict the values I could espouse, and I was in heaps of trouble.

Contracts, contracts

What relevance has this to the issue of contracting health services ? The way I see much of the debate over contracting in New Zealand and elsewhere, is that contracts are being seen as structural solutions to problems

* This has been adapted from a lecture to students on the Diploma of Health Services Management course, Massey University, New Zealand. The contents and ideas contained within this paper may be freely quoted and used on the understanding that their source is acknowledged. The author wishes to acknowledge the contributions made by the Bay of Plenty Area Health Board, community organisations in the Bay of Plenty, students and staff of Massey University, Philippa Howden-Chapman, the couple of hundred participants who have taken part in contracting workshops carried out by the author, Mary-Jane Rivers and Dianne Buchan.

which are essentially bound up with processes and values. In that light I agree with Philippa Howden-Chapman that the result is a highly cumbersome solution for dealing with resource allocation, monitoring and ideological problems.

So why do I remain an, albeit cautious, supporter of contracting in some of its guises? The reason has to do with my own understanding of what contracts are, and the potential benefits in using that understanding. In my view, contracts have the potential to be powerful tools in helping us achieve our goals, our prize. My own prize is the achievement of healthy communities. As a strategist, I therefore ask myself how can I most effectively use the structures and processes available to me to achieve that prize. From my experience in community work, organisational consultancy, and management, I believe that the clearer idea of what game you are in, why you are in it, how you'll play it and how well you are doing, helps significantly in developing those strategies. It is here that I believe the questions posed by the contract environment can have a significant and positive impact. But in order to achieve this we need to look at contracting through a slightly different lens .

What is contracting ?

The most important thing to do is to stop thinking about contracts as bits of paper with writing on. Firstly, the vast majority of contracts we enter into are oral and not written. We agree (ie contract) to meet someone for lunch, and our purchase of that lunch enters us into a complex set of contractual agreements. Secondly, the strength of a contract is not its structure (ie what is written down or spoken), but in the processes which generate willingness of the parties to abide by the spirit and conditions of that contract. I have spoken to lawyers, businessmen, voluntary organizations and bureaucrats about this. It is clear from what they say that remove that commitment and with the right legal advice, the right show of force and the right manipulation of information *any* contract can be made null and void. *The process of establishing and maintaining a contract is far, far more important than the structure of that contract.* This is why, much to people's initial disappointment, I do not come along to my contracting seminars armed with a sheaf of pre-written forms and spend time instructing people how to fill in the gaps. Instead I come with two questions. If a contract is not just bits of paper, then what is it ? And then how can we use it ?

So firstly what is a contract ? Business and Law Schools will tell you that it is an agreement of exchange. I do not deny that this is frequently the case, usually of goods or services for money. However, let me ask you to try an exercise which I have used many times in workshops and never fails to make its point. Imagine you wish to see the dying rays of the setting sun from your living room. Imagine too you are about to hire a builder to achieve this for you. Please stop reading this article and write down all the things you will talk to the builder about, and all the factors which will make you choose one builder rather than another What you should have in front of you now is quite a long list, of which the exchange of money for a window is only a small component. To me contracting is much more than terms of exchange. *A contract is a means of clarifying and reaching agreement, firstly on the nature of a relationship between two parties at a given point in time, and secondly on the aspirations for that relationship over a period of time.* The key words are clarity; agreement; relationship, now and over time. If you still don't believe me ask your next builder what he or she takes into consideration before agreeing to do a job, or even better someone who has just returned from contract negotiations in Japan. The lessons are slow to be learned. One of the most common complaints by voluntary organizations about contracts is that they are effectively imposed on them by government agencies. Not exactly the best start to a relationship. On a somewhat more optimistic note, I am hearing the phrase "contractual relationship" more frequently in government and business circles these days. But even so, unless the key elements of a successful contractual relationship are identified, there is a danger that we will still be constrained by the concept of exchange.

The six elements of a contract

Given that a contract can contain hundreds of different elements, is it possible to generalise ? I believe it is. From my experience with contracting I have identified six key elements of a contractual relationship. They are :-

1. **Achievements** (what difference will the contract make and to whom);
2. **Activities** (how it will be done);
3. **Resources** (with whom and with what; usually people, money, materials, equipment and accommodation);
4. **Information** (which can be exchanged, shared or given by one party to the other);
5. **Procedures** (something which happens regularly or when something particular occurs)

6. and above all **Values** (the reasons underpinning the above agreements, why the work is being done, the assumptions it makes, the principles it espouses, the standards expected).

I say above all values, because in my experience the most common reason for contract failure is disagreement over values; usually *because* there was no explicit discussion of key values during the contract negotiations. I find that the more time I spend on this during negotiations with clients, the better the job runs. Look back at the builder exercise. If you have done it thoroughly you will find that up to half of what you wrote will relate to attitudes, beliefs or values. If it does not then I ask you to write down all the reasons why you would or would not rehire the last builder you used. When negotiating contracts I urge you to keep these six elements in mind. People have found them an extremely useful checklist. A word of warning though; treat them as a checklist not a rubric. However, one thing I do know is that organizations which have taken this route have ended up, not only with better contractual relationships, but also have ended up with a much clearer idea of the game they are in. And *that's* my prize !

What do you mean “300 bed-space use-days” ?

And now I turn to the tricky subject of monitoring performance. I stated at the beginning of this article that I believed the contracting process could be valuable in determining how well we are doing. Not knowing that is a deeply disempowering force. I was recently in the depths of rural New Zealand talking to a community worker who had probably contributed more to the health of the local area than anyone else. Yet she had an overwhelming sense of failure. We spent an hour or so placing markers down the 15 years she had worked in the local area. Slowly a picture emerged not of failure but considerable success.

We all need those marker posts, personally, organisationally and professionally, and it can appear difficult to do this when the role of an organization is more than churning out widgets for a profit. Unfortunately, one of the major problems is that contracts often try and treat our work as if it *were* widgets. As someone who works with many different organizations, I am tired of hearing complaints about performance “measures” which bear little or no relevance to the job or its achievements. Such “measures” are demeaning, dispiriting and ultimately useless. Again I think our solution orientation has been a problem. I believe this solution orientation has prevented us looking closely at the assumptions behind these “measures and gain a clear understanding of where the problems of “measurement” actually lie. Because a contract is largely useless unless it has relevant and useful means of monitoring its performance, I believe the contracting process could at last force us to come up with indicators of performance that actually mean something.

Indicators and measures - the politics of numbers

Note that I said “indicator” not measure. I was listening to someone the other day who said in relation to health status, that there things that you could “measure” and things that were a bit more difficult. I find such statements extremely shallow. To me it says that they haven't looked at the assumptions we make about “measurements”.

What are those assumptions ? Firstly, the concept of measurement assumes that something only exists if we can detect its existence. In the health field that premise is highly questionable, and poses an important challenge to Managerialist approaches in general and contracting processes in particular. However, as long as we keep a careful eye on this assumption, I think in most cases the problem is not insurmountable. A more serious problem is that many of the things we assume to be measures are not measures at all. We are no more able to *measure* AIDS, or the level of degenerative hip disease, than the degree of self esteem within a community. Even if we could get constant definitions of AIDS or self-esteem, the information we gather to assess both phenomenon are “indicators” not actual measures. We may truly be able to “measure” the number of hip replacements carried out within a hospital, or the number of hip disease diagnoses, but they are only “indicators” of hip degenerative disease.

Once I got to grips with the implications of this I actually found it a very liberating notion. *The issue is not that some things can be measured and some cannot, but what indicators are used and who makes the decisions about their definition, acceptability, appropriateness, and accuracy.* Not for the first time in this article we are back to judgement and values. The block to progress becomes not the development of indicators per se, but the courage to do so, and the political will to accept that a range of slightly untidy “indicators” may be much more useful than a single neat, and respectable so-called “measure”. I need hardly to add that “untidy”, “neat” and “safe” are themselves value judgements.

The contracting process, by demanding indicators which actually mean something, may force those blocks to be demolished. For if contracts are to have any relevance then useful indicators are going to have to be found. If my experience is anything to go by, there is a potential flood of exciting, powerful and meaningful indicators just waiting to gain acceptance. My premise is quite simple. If it is possible for the phenomenon to be described, be it AIDS, self-esteem, or hip disorders, then it is possible for indicators to be based around those descriptions. The blocks are not technical, they are in our minds (what has been done in the past is always a powerful influence), and in the institutions which define what is and is not acceptable.

What's stopping us ?

Those are the opportunities which contracting brings, but for them to be seized we need to overcome a few hurdles. And those hurdles are closely associated with the two notions I mentioned at the beginning. Our focus on structure and on solutions.

Our tendency to concentrate on structures could mean that we miss the fundamental point of contracting - that it is a two-way *process* of relationship building and maintenance. This is compounded by the words we use. The words we use are important because they describe our perspective on the world. In particular, the words "purchaser" and "provider" encourage contracting to be seen in terms of exchange rather than a process of relationship building and maintenance. This is no theoretical concern. My wanderings around the New Zealand health scene have demonstrated that many have fundamentally never realised this, although encouraging noises are beginning to emerge.

Secondly, the two traits; faith in structures and solution orientation, combine to erect another hurdle. There is at the present time a strong tendency to turn dualist concepts into structural forms. By dualist concepts I mean for example, purchaser and provider; manager and worker; public health and personal health; policy and implementation; theory and practice; problem and solution. These concepts are powerful analytical tools to help us clarify this amazingly complex world we live in. But it is the most serious of mistakes to assume that conceptual models translate simply into organisational form. Yet this is what we have done. In establishing these dualist operational structures we potentially create barriers to process. These are not only physical barriers; they are attitudinal too. The classic dualist concept is "them" and "us". Therefore, if we take the view that contracting should be essentially a process by which relationship issues can be identified and resolved, then we must consciously work to ensure that the structural barriers we have erected do not hinder those resolutions. We must not allow the clarity that dualist concepts gives us to be compromised by the dualist structures we have erected.

The third problem is the "Lets get on with it" attitude. Now I'm not advocating that we retire to smoke filled rooms and muse for a century or two. I want to get on with "it" too; remember I have a prize to gain and I'm not getting any younger. I am just concerned that "it" will be another collection of solutions. What is the point of getting on with the solutions if it isn't actually getting on with the problems ? The current environment will be around for a while, which means we have time. A few moments of that time spent reflecting on some of the assumptions behind, and consequences of, our solutions almost certainly will bring us better solutions. Better still, we have the opportunity to go behind the problem, work out what our prize is and work forwards from that. And I'm not just talking about health goals or bed space targets. I have worked out my prize, I have studied the current environment, I know what problems I am likely to encounter, how they interact with each other, and what the appropriate solutions can be. Even more importantly, I am very clear how I can use the new structures to do this. Taking a lesson from my community work days, one of the great advantages about structures over processes is that you can use them to get virtually whatever you want. The contracting structure is no exception. The trick is to know clearly what you want and why you want it.

EXAMPLE CONTRACT

The example contract below is based on a real one, which was negotiated and written according to the principles outlined in the articles “Keep your eyes on the Prize”, and the “Guidelines for action”. In particular, it uses the six elements of a contract, the idea of relationships and few alternative approaches to performance monitoring and evaluation. The original contract has been reshaped to highlight these points, and many of the performance indicators relating to activities and achievements have been excluded for the sake of brevity. And before you start pouring over maps of New Zealand, Dargeton doesn’t exist, nor does the South Western Regional Health Authority (at least at the time of writing). As to the Drinkwell Trust, I am sure someone has thought of the name before me. If so, my apologies.

CONTRACT BETWEEN DRINKWELL TRUST AND THE SOUTH WESTERN REGIONAL HEALTH AUTHORITY

AGREEMENT ; Dated the 29th day of February 1994

BETWEEN The South Western Regional Health Authority
AND Drinkwell Trust

IT IS AGREED AS FOLLOWS

PAYMENTS AND RECORD KEEPING

That the South Western Regional Health Authority and Drinkwell Trust (hereafter called the Parties) will accord with the terms of this contract including obligations stipulated under Schedule A.

That the Parties agree to keep such records as to allow the terms of the contract to be monitored and evaluated in the manner described by Schedule A.

The South Western Regional Health Authority will pay Drinkwell Trust in a lump sum at a date no later than the earliest date specified in Schedule A.

The South Western Regional Health Authority shall keep accurate accounts of payment which will be available for inspection by the Drinkwell Trust.

That Drinkwell Trust shall keep accurate accounts and records of all income and expenditure relating to this Contract and will provide financial statement and audited financial reports to the South Western Regional Health Authority on request.

INDEPENDENT CONTRACTOR

That Drinkwell Trust will be an independent contractor and not the employee or agent of the South Western Regional Health Authority and the employees of the Drinkwell Trust will not be the employees of the South Western Regional Health Authority.

EMPLOYEES

In respect of any person employed by Drinkwell Trust for the purposes of this contract the Trust agrees to act as a responsible employer of paid staff and volunteers and ensure that no job applicant or employee paid or unpaid suffers discrimination on the ground of sex, race, sexual orientation or marital status in relation to pay and conditions of employment.

ASSIGNMENT AND SUB-CONTRACTING

The Parties may assign activities under this Contract to any person or organization but will not without the written consent of the other Party assign to a third party any rights or obligations that occur under this Contract.

CONFLICT OF INTEREST

It is agreed that the Parties may enter into agreements with other persons or organizations for the provision of services outside the scope of this contract provided that:

such services do not conflict with the Parties obligations under this Contract and that

services outside the scope of those described in Schedule A are not subsidised by funds provided by the South Western Regional Health Authority and that

the Parties discharge their obligations under this contract.

VARIATIONS TO THE CONTRACT

The desire to vary (including terminate) the contract may be expressed in writing by either party and include details of the proposed amendment or alteration together with the reasons for this. Following this the parties will meet at the earliest opportunity to discuss the proposed changes. No change shall be made to the contract unless the two parties agree. In the event that agreement cannot be reached the final decision will be made by the Chair of the South Western Regional Health Authority.

TERMINATION

If either party fails to comply with any provisions of this Contract the aggrieved party shall give written notice to the other party requiring it to remedy the breach within 30 days and if it fails to do so then the aggrieved party may terminate the Contract without further notice.

ARRANGEMENT OF EXPIRY OR EARLY TERMINATION

On the expiry of the term or on earlier termination of this Contract the Parties will

deliver all records relating to the use of resources and monitoring of the work as required by either Party

return all resources referred to in Schedule A not used as required by the South Western Regional Health Authority.

SIGNED

CONTRACT BETWEEN DRINKWELL TRUST AND THE SOUTH WESTERN REGIONAL HEALTH AUTHORITY

SCHEDULE A

This schedule records the agreements of the Parties in relation to the following issues :-

ACHIEVEMENTS

ACTIVITIES TO BE UNDERTAKEN

RESOURCES AVAILABLE

PROCEDURES

INFORMATION

VALUES

THE CONTRACT BETWEEN THE PARTIES SEEKS TO ACHIEVE THE FOLLOWING DIFFERENCES

Clients of Drinkwell

Clients will be able to use not abuse alcohol or abstain from alcohol use as appropriate to them and their situation;

Clients will have enhanced self esteem and self awareness

Monitored by :-

Occasions where clients have consumed excess alcohol (eg do or don't get left behind when the bus goes after a football match; traffic offences);

For Maori clients the level of knowledge of Maori culture

Targets for evaluation purposes:-

Only three reported cases of clients having to walk home.

Only one client will have been in a fight.

The majority of clients on a controlled drinking programmes are reported to be able to maintain moderate drinking; the majority of clients on abstinence programmes will remain abstinent for at least 6 months after the end of their involvement in the programme.

The majority of Maori clients will have improved their knowledge of Maori culture.

The Dargeton Community

Greater awareness and understanding of the implications of alcohol and drug abuse within the Dargeton community.

Monitored by:-

The incorporation by local schools of alcohol and drug issues into their curriculum

The response of local organizations and institutions to the Trust's work

The relationship between the Trust and Justice, and Police.

Drink related traffic offences committed by local people.

Targets for evaluation purposes:-

Most schools will have begun to incorporate A&D issues into their curriculum

The current level of drink related traffic offences will be maintained.

A substantial number of local organizations and institutions take the initiative in approaching the Trust for assistance.

The Regional Health Authority

Regional Health Authority policies and activities respect the particular needs of the Dargeton community as expressed by the Trust.

Monitored by :-

The degree to which the Trust and Board agree on the above issues

Targets for evaluation purposes:-

The Board is able to convince the Trust that all measures which do not respect the particular needs of the Dargeton community are related to wider objectives of the Board.

THE FOLLOWING ACTIVITIES WILL BE UNDERTAKEN

By Drinkwell Trust

Provide promotion, education and counselling in relation to alcohol and drug abuse in the Maori communities in the Dargeton area.

Monitored by :-

The number of counselling sessions; the number of visits by the educator to local schools.

Targets for evaluation purposes:-

The counsellor undertaking an average of 4 sessions per week; the educator making an average of 6 visits to schools per month.

By the Regional Health Authority

Training made available to Trust workers.

Monitored by :-

Receipt by the Trust of Board training circulars

Targets for evaluation purposes:-

All Board training circulars received by the Trust

THE FOLLOWING RESOURCES WILL BE MADE AVAILABLE :-

By the Board to the Trust

Money - \$46,000 (inclusive of GST) to be paid in 3 monthly instalments from the signing of this contract

People - A health promotion worker one day a week equivalent; a professional supervisor for the Trust Counsellor

Other resources - An office and the running expenses of that office (excluding telephone charges and secretarial support); the use of Regional Health Authority mini-buses; training facilities

Monitored by :-

The delivery of the above resources

Targets for evaluation purposes:-

The money being paid on time in all cases

The personnel and other resources being available on request except in circumstances where their availability would be impossible

By the Trust to the Board

Money - None

People - None

Other resources - Training in community development techniques for the Authority's Alcohol and Drug workers

Monitored by :-

The delivery of the above resources

Targets for evaluation purposes:-

The resources being available on request except in circumstances where their availability would be impossible or inappropriate.

THE FOLLOWING PROCEDURES WILL BE OBSERVED

The parties will refer clients to each other in a manner to be agreed

The parties will be able to participate in each other case conferences providing that it does not conflict with obligations in other parts of this agreement or agreements with other parties.

The parties will notify each other of activities which may affect the contract.

The Trust will be included in all relevant Regional Health Authority planning and reviews.

The parties will notify all staff, officers and others with obligations under this contract and make clear their obligations under this contract

The parties will provide a monitoring report to each other which contains a summary of the information gathered as part of the monitoring described in this Schedule. The report to be submitted to the other party by (date).

The parties will provide a report evaluating the contract in terms of the obligations specified in this Schedule. The report will also include discussion of any particular circumstances which (favourably or unfavourably) influenced the ability of the organization to meet the agreed targets. The report is to be submitted to the other party by (date).

Monitored by:-

The establishment and use of a method of referral

The compliance with the above agreements

Targets for evaluation purposes:-

Full compliance will all the above conditions except where there is agreement between parties that compliance was inappropriate or not possible.

INFORMATION

The parties will supply information on request by the other party which relates to the obligations under this contract;

The Trust will supply the Board with information it gathers on the level of alcohol abuse in the local community and the community response to this use.

The Parties will supply each other with information they gathers on the treatment of local people with alcohol and drug problems.

The Board will notify the Trust of all training programmes related to alcohol and drug training and health promotion.

Monitored by:-

The compliance with the above agreements

Targets for evaluation purposes:-

Full compliance will all the above conditions except where there is agreement between parties that compliance was inappropriate or not possible.

THE FOLLOWING VALUES, STANDARDS AND DEFINITIONS HAVE BEEN AGREED AS THE BASIS OF THIS CONTRACT BETWEEN THE TWO PARTIES

Definition of Health

The parties agree to the WHO definition of health as being the state of complete physical, mental, spiritual, mental and social well-being.

For Maori clients health be regarded as a taonga as expressed in the Treaty of Waitangi. In particular the trust will work to the following Whakatauki - Kei tunga taku whare i nga pou e wha, E he ana tetahi pou, E he ana te Whare katoa, Te tikanga o enei pou,

Te Taha Wairua
Te Taha Hinengaro
Te Taha Whanau
Te Taha Tinana

Monitored by:-

The involvement of client's community in treatment
Liaison with other agencies involved in client's well-being

Targets for evaluation purposes:-

All client treatment has community involvement unless specific documented circumstances prevent this.
No client is placed under any unavoidable social, and cultural circumstances which prevents their physical and mental rehabilitation.

Ethical standards

That the Trust complies with the same standards concerning confidentiality as the Authority

Monitored by :-

Compliance and the level of known breaches

Targets for evaluation purposes:-

No reported breaches of confidentiality

Employment standards

The Trust agrees to act as a responsible employer of paid staff and unpaid staff and ensures that no job applicant or staff suffers discrimination on the ground of sex, race, sexual orientation, or marital status in relation to pay and conditions of employment

Monitored by :-

Compliance

Targets for evaluation purposes:-

No reported breaches of compliance

THE PERSON WITHIN THE REGIONAL HEALTH AUTHORITY TO WHOM ALL MATTERS ABOUT THIS CONTRACT SHOULD BE DIRECTED IS :-

Rita Blair, Manager , Alcohol and Drug Services

THE PERSON WITHIN THE TRUST TO WHOM ALL MATTERS ABOUT THIS CONTRACT SHOULD BE DIRECTED IS :-

Wairiti Olsen, Chairperson, Drinkwell Trust

