

4ps

4ps Review of Operational PFI and PPP Projects

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project support
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local government's project delivery specialist

Acknowledgments

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Section 1

Introduction

- 1 The Private Finance Initiative (PFI) plays an important role in the delivery of the Government's investment plans for public services. This investment programme is delivering extensive new and modernised infrastructure to public services. Evidence to date suggests that the PFI is most appropriate where there are major and complex capital projects with significant ongoing maintenance requirements. For these projects, the Service Provider can offer project management skills, innovative design and risk management expertise that can bring substantial benefits. Properly implemented, PFI helps to ensure that desired service standards are maintained, that new services start on time and facilities are completed on budget, and that the assets built are of sufficient quality to remain of high standard throughout their life.



- 2 PFI needs to be managed as a mature relationship between the public and private sectors that recognises their mutual responsibilities. PFI relationships are very different from privatisation, in which the market and price mechanism defines the service provided. The private sector has always been involved in the building and maintenance of public infrastructure. PFI ensures that Service Providers are bound into long-term operational contracts and shoulder the responsibility for the quality of the work that they do. With PFI, the Local Authority defines what is required to meet public needs and remains the client throughout the life of

the Contract. Using the Contract, the Local Authority ensures the delivery of the outputs it sets and has rights under those Contracts to change the output required, if necessary. Consequently, with PFI the public sector can harness the private sector to deliver investment in better quality public services while maintaining frontline services in the public sector.

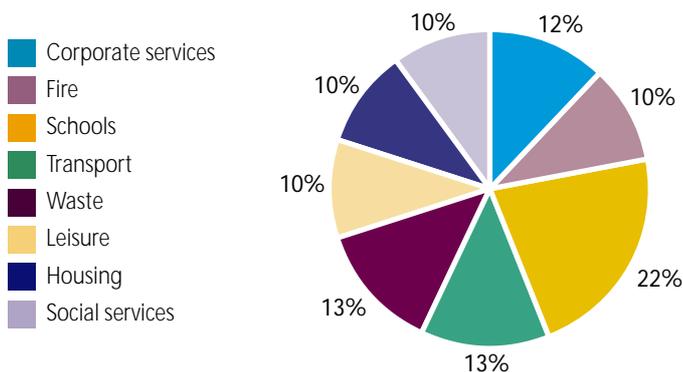
- 3 Nearly 150 local authorities have been involved in PFI projects, and some 292 local government PFI projects have been endorsed by the Project Review Group (PRG) to go forward to procurement. These projects have a capital value of some £10 billion. The Spending Review 2004 announced a further £7 billion of new funding for local authority PFI projects, bringing the total funding available for investment in local services through the PFI to £19 billion by 2007/2008.
- 4 Of the PFI schemes approved for funding to date, 158 are now operational delivering local services. In addition, a significant number of public private partnerships (PPP) and long-term strategic partnerships are also in operation.
- 5 In bringing all these projects from concept to fruition, invaluable experience has been gained, expertise acquired and lessons learned. Clearly it is of enormous benefit to both the public and private sectors to disseminate this knowledge and share the skills appropriately in the development of similar schemes in the future. With this objective in mind, over a six-month period the 4ps project support team has undertaken a review of some 30 of the operational local government PFI schemes and PPP schemes. The principal aim of the review was to begin to answer the question: Are PFI contracts working in terms of providing improved public services?

6 The team made visits to operational projects in England between October 2004 and May 2005. Interviews were held with the key stakeholders involved in the management of the operational project, including:

- The Local Authority contract manager
- The Service Provider representative
- A user of the services, for example the head-teacher in a schools scheme, and tenants in a housing scheme.

7 The review programme covered all sectors of local government where PFI and PPP schemes are operational, and the chart below shows the coverage of the review by sector:

Figure 1 – Sectors and Projects Reviewed



8 Members of the 4ps team discussed with the Local Authority contract manager and Service Provider representative their experience of managing the operational project; and with users their experience of service delivery. To ensure consistency of approach, a structured set of questions was used in the one-to-one interviews.

9 The main content of the review examined the following:

- Whether services are being delivered in line with the approach set out in the Service Specification/Output Specification
- The effectiveness of the Payment Mechanism
- How the Contract/Project Agreement is being used in the delivery of services.

10 The review also explored a range of other issues, including:

- Handover of the services to a new Service Provider
- Change management
- Partnership relationships
- Benefits realisation
- Contract management arrangements
- User satisfaction.

11 This report sets out the results of the 4ps review. It comprises:

- Summary
- Findings, conclusions and recommendations in the areas of:
 - Mobilisation and developing the new partnership
 - Output Specification
 - Payment Mechanism
 - Contract.

12 The report provides an initial snapshot from investigating a sample of operational projects and will be updated in due course with data collated from further operational schemes in each local government service area, which the 4ps will continue to review. This work will ensure that the lessons learned from operational schemes can continue to be used in the development of new projects.

Section Two

Summary



13 This objective and structured review has given a clear indication of what is being achieved using the PFI and PPP, and what can be done to improve the processes. There are successful operational PFI projects and this initial review of operational PFI and PPP projects across local government sectors has highlighted what is being done well, and the issues still to be addressed in certain sectors.



14 The results of the 4ps review show that the PFI is working well for local authorities. Users and stakeholders are generally delighted with the new facilities and services now being provided, following years of under-investment in the service. A number of the Local Authority schemes reviewed had received awards, and Local Authorities were very proud of their achievements.



15 A number of Local Authorities commented on the high costs of procurement and the length of time taken to deliver partnership and PFI projects, and these remain issues to be addressed in a number of sectors. It was also evident that lessons had been learned, and that the experience gained would benefit the delivery of subsequent PPP and PFI schemes. 4ps Procurement Packs will also help in this regard.

Mobilisation and developing the new partnership

16 Users of the services provided through the PFI and PPP generally returned a higher satisfaction rating than the Local Authority's contract manager, perhaps reflecting the fact that the users did not experience the day-to-day management challenges faced by the Local Authority. In local government, partnerships between the public and private sectors are, with a very few exceptions, working. Service Providers are in the main delivering the contracted services on time, to budget and within the Specification, and

consider that they are making a contribution to the delivery of local services. A number of Local Authorities commented on how smoothly the partnership schemes had been implemented.

17 The experience of Local Authorities in the operational phase of their schemes is shown in the review to vary significantly for a number of reasons. Contract management in the different sectors often calls for a different approach. For instance, technical/engineering service areas are already familiar with contract management, whereas in other local government sectors there is typically less experience of managing major contracts.

18 Continuity of personnel involved in monitoring performance of the contracted facility/services emerged in the 4ps review as a significant issue in a number of the schemes reviewed. Many Local Authorities had also under-estimated the scope and costs of contract management, pointing to the need for long-term management issues to be taken into account during the procurement stage, along with developing partnership relationships, knowledge transfer, mutual understanding and trust.

Payment Mechanism and Output Specification

19 There is also variance between Local Authorities in the ways in which they apply the Payment Mechanism for the scheme in terms of making deductions and operating the partnership, and interpreting the Output Specification. In some cases this was due to the differences in the schemes themselves, but it was apparent that there is room for improvement to the development of the Output Specification in some sectors, and to the performance monitoring regime and Payment Mechanism.

20 Output Specifications should be developed in a way that encourages Service Providers to be innovative in the solutions they offer for the provision of the contracted facility/services. The 4ps review identified some examples of innovative practices or new ways of working, such as initiatives aimed at improved focus on user involvement. There does however, appear to be further opportunity for Local Authorities to reduce the constraints and better encourage their technical advisors to be more open to new ideas and proposals.

21 Service Providers were shown to provide a high level of delivery against the Output Specification.

Contract

22 In the operational phase of these schemes, some Local Authorities had referred to the Contract regularly (principally to clarify service obligations), whereas others had not looked at the Contract since financial close. The reasons for this difference and the outcomes, are discussed in more detail later in this report. Their findings led 4ps to suggest that partnerships sustained over the long-term will feature respect by each party for their contractual commitment to work together to resolve difficulties and to seek continuous improvement, and the achievement of a balance between partnership working and commercial reality.

23 Very few changes had been made in the operational phase to the Contracts for the schemes reviewed, although a small number of schemes had needed to clarify aspects of the Contract. Queries had arisen on risk transfer and payment deductions as a result of different interpretations of the Contract documentation, and uncertainty about what certain statements meant. Whilst most Local Authorities and Service Providers considered the Contracts in place to be 'future proofed' against legislative change, there was some concern that there was not sufficient flexibility.

24 It was evident from the review that some Service Providers were experiencing pressure as a result of price changes in the market, leading to protracted discussions on variations to the Contract. This has indicated that these factors should be considered more effectively at the Contract drafting stage, and both parties need to better understand benchmarking.

25 The review indicated that there is a need for a greater understanding, particularly on the part of Service Providers, of the independent working of Local Authority processes.



Findings, conclusions and recommendations

1. Mobilisation and developing the new partnership

26 Most Local Authority projects are likely to include a mobilisation period between Contract signature and service commencement, and as part of the procurement process the Local Authority will need to determine those tasks that the Service Provider needs to have satisfactorily completed before the Service Provider can commence the services. The tasks are typically documented in a mobilisation plan. The aim of the mobilisation plan is to ensure that a safe and continuous level of service is provided at the point of transfer of service responsibilities, and that appropriate arrangements are put in place to communicate the handover arrangements with users and stakeholders of the service. The mobilisation plan should clearly set out the arrangements for communicating with users and stakeholders the change.

27 Generally, it was the experience of Local Authorities that the mobilisation of the contracted facility/services was very successful. However, a number of the schemes reviewed had experienced some challenges during the mobilisation period, including:

- Service users adjusting to a cultural change in the management of the service
- Raised expectations not being met
- Too demanding a timescale for completion of the mobilisation works.

28 A number of Service Providers reported delays in completing the statutory planning processes.

Recommendation

Local authorities need to be more explicit when developing the project documentation for mobilisation responsibilities, ensuring that risk and responsibilities for specific tasks are clearly defined and understood by all parties. The mobilisation plan should clearly set out responsibilities for completing any statutory processes.

Developing the new relationship

29 For many of the projects reviewed, the Local Authority had made significant efforts to communicate with a range of stakeholders and partners to ease the transition to the new arrangements.

30 In a small number of instances, however, this did not go far enough, and it was felt that more attention could have been focused on this aspect.

Recommendation

The mobilisation plan should incorporate details of how the transition will be implemented by all parties, and appropriate communication arrangements and stakeholder consultation arrangements should be put in place and agreed well in advance of 'handover'.

31 In the majority of the schemes reviewed, the transition to the new Service Provider had gone very well and within the timescale, despite a few relatively short-term teething problems.

32 In almost all cases, the Local Authority and Service Provider described their partnership relationships as very good. Whilst they acknowledged that at times there were natural tensions in delivering the service, it was clear that there was a determination and commitment to making things work through a partnership approach, and a recognition that there was a need to foster partnership working to deliver both a quality service today, and to continuously improve the service in to the future.



2. The Output Specification

- 33 The Output Specification (or Service Specification) is arguably the most important document in the procurement of a project through a PPP or the PFI. The Output Specification is the basis through which the Local Authority defines the services and outputs that it requires from the Service Provider for the term of the project.
- 34 The Output Specification is the document in which the Local Authority states in output terms what they need to achieve from the services, and any associated facilities to be provided. The Output Specification typically aims to detail what needs to be achieved not how it is to be achieved, and a well-drafted Output Specification is fundamental to the successful delivery of long-term services.
- 35 Local Authorities need to determine, as part of developing the Output Specification, what information will be required from the Service Provider. Local Authorities have typically done this through requesting contractual Method Statements (sometimes collectively encompassed in a Service Delivery Plan). Method Statements typically form an important link between the Output Specification and Payment Mechanism, setting out in detail (and often in input terms) how the Service Provider will perform the works and deliver the services. Service delivery approaches will inevitably change during a long-term Contract and the Contract will need to incorporate appropriate arrangements for dealing with the necessary changes to the Service Provider's Method Statements.

Clarity of the performance requirements

- 36 One of the key issues emerging from the 4ps interviews was the need for greater definition and clarity of the performance standards in the Output Specification. Different interpretations of what was required were

often the cause of disagreements between parties, with the Local Authority having one view on the performance requirement for the service specified in the Output Specification, and the Service Provider having another interpretation.

- 37 Local Authorities need to be very specific in terms of service standards and performance requirements to ensure that the Contract documentation is tight enough, and not prone to different interpretations.

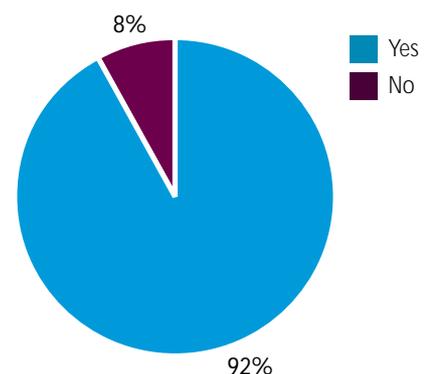
Recommendation

When developing project documentation, it is necessary to ensure that the relationship between the Output Specification and the Service Provider's Method Statements will ensure appropriate specificity and risk transfer, as well as providing sufficient flexibility to meet future operational requirements. Responsibilities should be clearly defined, and Local Authorities need to be explicit about how and what use is to be made of Method Statements in service delivery and performance monitoring.

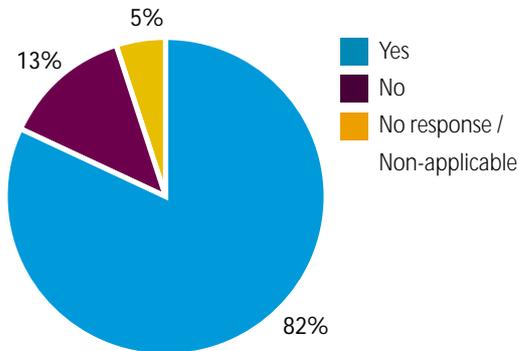
Understanding and using the Output Specification

- 38 Nearly all those interviewed claimed a good working knowledge of the Output Specification, which were in most cases complete and fully documented.

We asked individuals "Have you read and understood the Service or Output Specification for this project?"



We asked individuals "Is all documentation (Method Statements and Output Specification) complete and available for the project?"



Recommendation

Local Authorities should ensure that all documentation is complete and available to the contract manager and Service Provider representative.

Delivering the services specified

39 The 4ps review showed that services were generally being delivered in accordance with the Local Authority's expectations, and there was a high degree of delivery against the performance standards set out in the Output Specification. Users and stakeholders are especially delighted with the new facilities and services now being provided. The design and capital works elements of the projects scored more highly than the service delivery elements, possibly reflecting the fact that it is easier to satisfactorily deliver a new facility than new services, where the achievement of satisfactory performance is often more subjective.

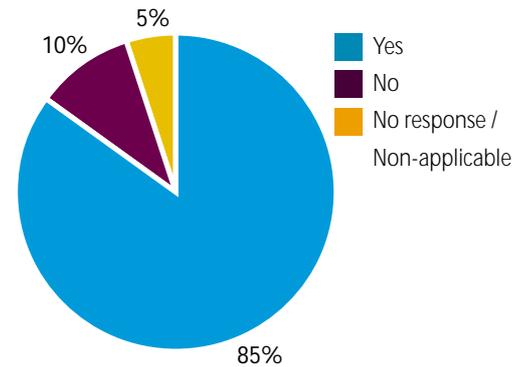
40 Service Providers interviewed believed that they were delivering a good service and had 'made a real difference' to the delivery of local services.

Service Provider

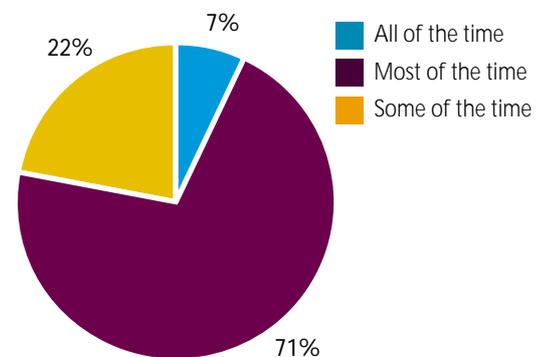
"We have, from the time the school opened, received feedback from the headteacher, staff and parents that they were delighted with the new school environment. We hope that this translates into improved educational attainment."

41 Local Authorities and users were very satisfied with the design and construction of the new facilities. With the exception of a small number of projects, all those reviewed had been delivered on time, and the majority had been delivered within the agreed specification.

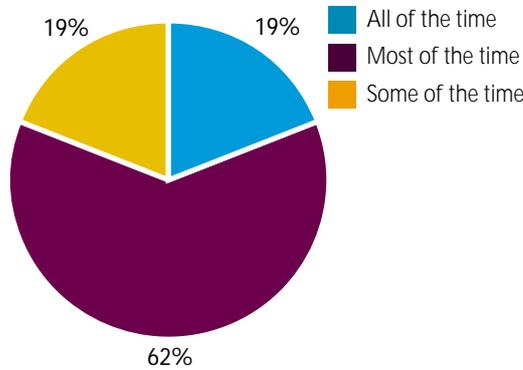
We asked individuals "Has the build/installation/investment programme been completed in accordance with the Output Specification?"



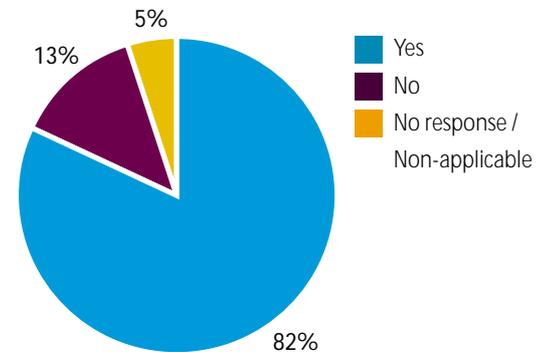
We asked individuals "In your opinion, are the services being delivered in accordance with the Output Specification?"



We asked individuals " In your opinion, are services being delivered in accordance with your expectations?"



We asked individuals " During the investment programme, were the relevant good practice requirements on design followed by the Service Provider?"



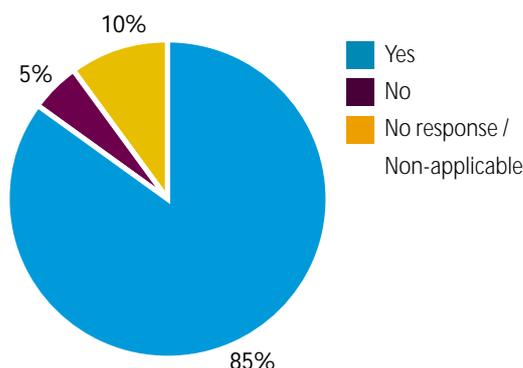
Project Owner

" To compare the leisure service now with the previous one is like 'chalk and cheese'. This is a fantastic modern leisure centre which serves the needs of the community, and is something we are all very proud of. The previous facility and service was simply unfit for purpose, and beyond modernisation through a refurbishment programme. With the new facility, participation rates have improved and the school swimming programme can now be delivered in a quality learning facility."

Achieving good design

42 The majority of the Local Authorities reviewed were very satisfied with the new 'asset', and the majority of respondents believed that the new facilities had been well designed.

We asked individuals " Do the assets / facilities meet your requirements in terms of good design?"



43 The review identified some examples of innovative practices or new ways of working, many associated with increasing user involvement. Whilst new ways of working and innovation are inevitably always going to be incremental, and perhaps more likely on the larger schemes (given the greater benefits that are likely to accrue), there appears to be some opportunity for Local Authorities to reduce the constraints and better encourage their technical advisors to be more open to new ideas and proposals.

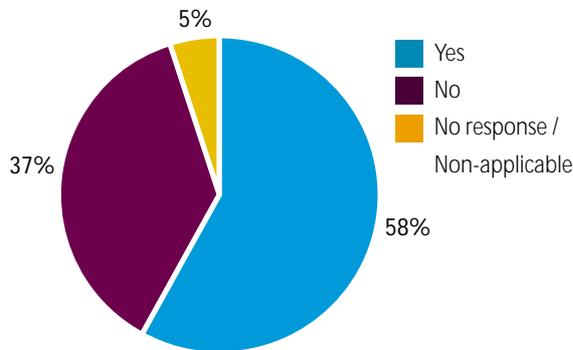
Recommendation

Local Authorities need to encourage and incentivise new ways of working and innovative approaches.

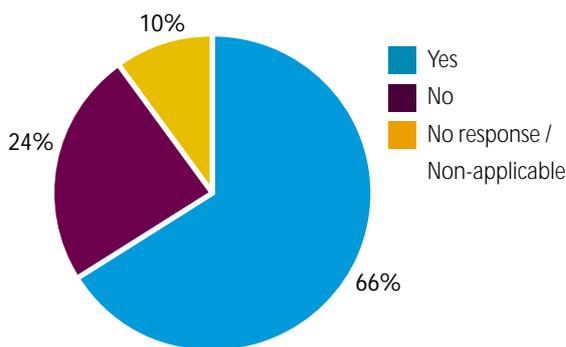
Service changes

44 A number of the Local Authorities interviewed had needed to review the Output Specification since financial close; about two-thirds of those interviewed believed changes would be necessary in the future. Many of the changes that have been necessary appear to be linked to interpretation issues on what the service requirement meant in practice. However, changes have also been made to reflect new regulatory requirements, and for changes in the project scope. Whilst changes are inevitable, making the necessary changes was in many cases a drawn-out process.

We asked individuals " Have you had to review or clarify the Output Specification since the Contract was awarded?"



We asked individuals " Do you anticipate that changes will be required to the Output Specification to meet the Local Authority's future requirements for the services?"



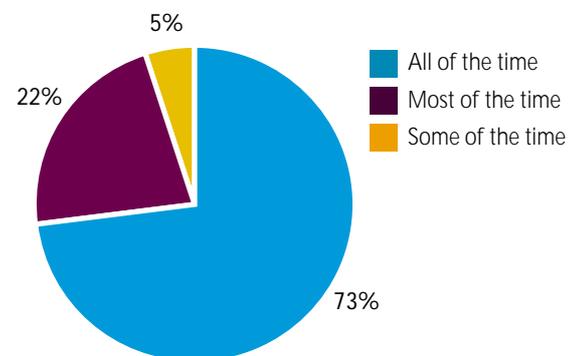
Recommendation

Greater scrutiny and testing of the service requirements is needed at the procurement stage in a number of sectors. Local Authorities should ensure that the Contract Manager becomes involved during the procurement process, and that the Contract Manager fully understands the proposed service requirements. 4ps is also to review the Output Specification drafting used in a number of sectors to identify if improvements are necessary.

Meeting the response and rectification targets

45 Local Authorities were generally satisfied with the way in which service failures had been rectified.

We asked individuals " Are response and rectification times in your view being met?"



3. The Payment Mechanism

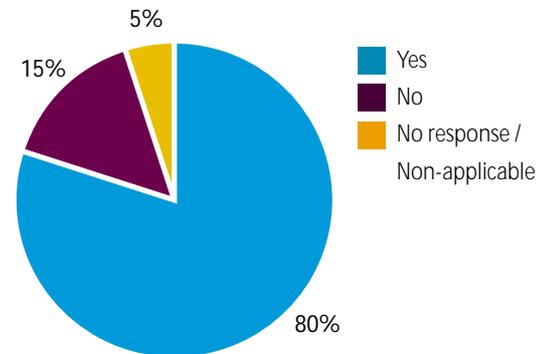
46 Since the essence of a PFI arrangement is the procurement of a service, sub-standard performance in the delivery of that service by the Service Provider should result in reduced payment by the Local Authority or, in certain circumstances, no payment. The Payment Mechanism will, therefore, be fundamental to the PFI Contract, as it puts into financial effect the allocation of risk and responsibility between the Local Authority and the Service Provider.

47 As the Payment Mechanism is there to ensure that the Local Authority's objectives for the project are being delivered, it should be linked to the outcomes and outputs for the project set out in the Output Specification. The Payment Mechanism should include appropriate incentives for the Service Provider to deliver the service in a manner that gives best value, and promotes partnership working. The key to a successful Payment Mechanism is the relationship and interdependency between the Output Specification and the Payment Mechanism. It is important, therefore, that these are developed in conjunction.

Understanding the Payment Mechanism

48 The majority of those interviewed had read and understood the Payment Mechanism. Where this was not the case, it was generally because the respondent was a user rather than contract manager.

We asked individuals " Have you as an individual read and understood the Payment Mechanism/payment arrangements for this project?"



49 Whilst the Payment Mechanism is sometimes viewed as 'inaccessible', and a document drawn up by the financial and legal advisors to the project, it is important that key personnel and stakeholders involved in the project understand the key principles of the Payment Mechanism.

Recommendation

It is essential to ensure that key personnel are familiar with the principles of the Payment Mechanism, and how the Service Provider is recompensed for the contracted services.

Performance monitoring

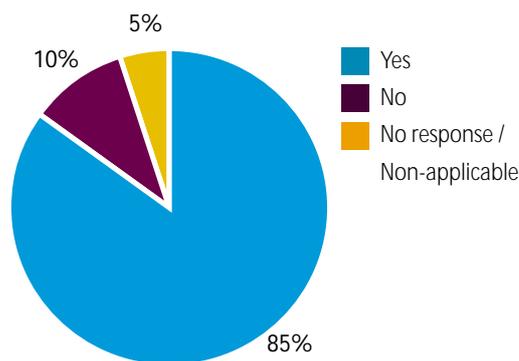
50 Given the predominance of performance monitoring requirements in local government over the previous decade, it was not surprising to see emphasis placed on performance targets in the development of projects.



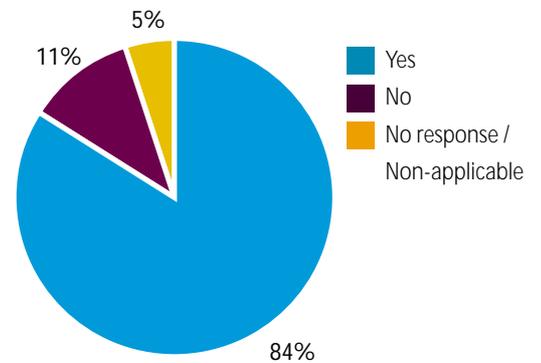
51 Monitoring processes generally include the production of a monthly monitoring report by the Service Provider which includes a request for payment of the unitary charge based on the Payment Mechanism. Often this report forms the basis for a monthly Local Authority and Service Provider meeting to discuss the content of the monitoring report and any issues arising, such as under-performance and potential payment deductions.

52 In the majority of the schemes in this review, performance monitoring reports were being prepared by Service Providers, and the reports provided sufficient information to monitor performance adequately, and determine the necessary payment. In some instances it has been necessary for the Local Authority and Service Provider to work together to develop the performance monitoring arrangements further to ensure that the necessary performance monitoring information is being provided.

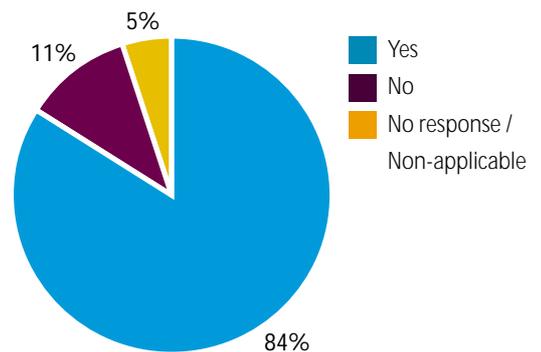
We asked individuals " Are monitoring reports being prepared by the Service Provider and assessed by the Local Authority for each payment period?"



We asked individuals " Do you or have you received Performance Monitoring reports from the Service Provider in accordance with the contract?"



We asked individuals " Do the monitoring reports provide sufficient analysis to enable payments to be accurately computed?"



Recommendation

Appropriate effort needs to be given to the development of the performance monitoring regime during the procurement process; getting this right at an early stage will facilitate better long-term relationships, and ensure consistency and clarity in the performance monitoring regime.

53 Generally, all parties agreed that the Local Authority had sufficient expertise in place to manage the Contract. This point was reinforced when the Service Providers were asked whether they considered that Local Authorities had the right management structures to manage the new partnership contracts. In almost all cases the response was yes.

54 Many of the schemes reviewed had experienced a change of personnel responsible for the monitoring of the contracted services; this was an issue for both Local Authorities and Service Providers.

Recommendation

It is important that there are appropriate transition arrangements, ensuring continuity and transfer of knowledge. Local Authorities and Service Providers need to ensure that there is adequate succession planning to maintain stability in the partnership.

55 Few Local Authorities had used formal training methods for their contract management staff: they were very confident that they had sufficient expertise in place and structures to manage the Contract. This had been achieved through using personnel who had previously been involved in the PFI procurement, or who had previous experience of managing PFI schemes in the Local Authority, or another Local Authority.

56 The review findings indicate that Local Authorities had in many instances underestimated the costs of contract management, and the majority of those interviewed had needed to increase their level of monitoring.

57 Whilst for some schemes this may reflect the fact that the majority of the monitoring to date has been associated with the build or investment period (which typically does involve a higher degree of monitoring), there was also some evidence to suggest that Local Authorities had not in all instances fully

assessed the contract management and performance monitoring requirements of the PPP/PFI scheme, and had not set aside sufficient resource for contract management.

58 It is important that attention is given to the long-term management issues at the procurement stage, including developing partnership relationships, knowledge transfer (from the procurement team to the contract management team), mutual understanding and trust.

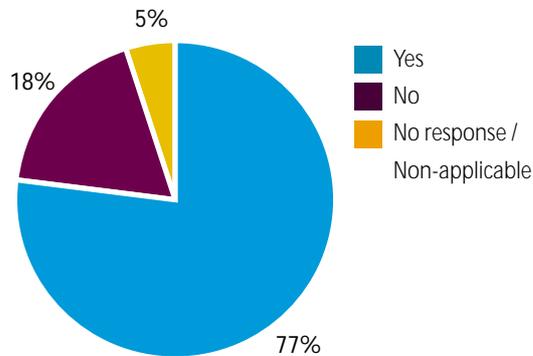
Effectiveness of the payment arrangements

59 Performance deductions under the Contracts varied, with minimal or zero deductions being made in some schemes; in others, deductions were being made for sub-standard performance. In general, those Contracts with a greater technical or engineering element had made more regular deductions; this appeared to reflect the fact that contract management in the technical and engineering service areas is more established, and that the personnel involved are more comfortable with contact management. The more 'technical' areas may also benefit from more objectivity in defining the service requirements.

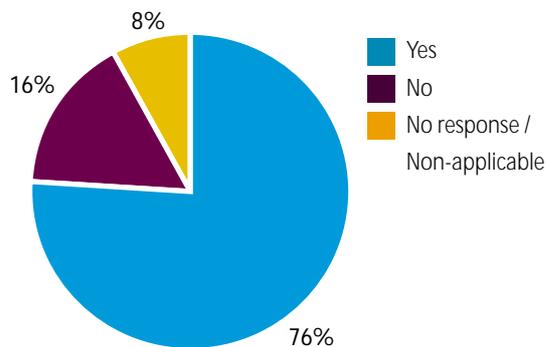
60 There appear to be different approaches to the operation of the Payment Mechanism by different Local Authorities, some taking a more contractual approach than others. Several Local Authorities had never imposed deductions even though circumstances would justify them.

61 A number of Local Authority representatives stated that deductions were not being made in accordance with the Payment Mechanism, or they noted that the Output Specification or Payment Mechanism did not adequately cover all of the services now required from the Service Provider.

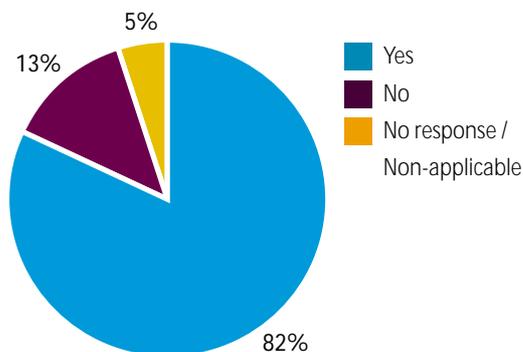
We asked individuals " Have or are financial deductions being made in accordance with the Payment Mechanism or payment arrangements?"



We asked individuals " Have or are service points/performance points/penalty points being awarded in accordance with the Payment Mechanism/payment arrangements?"



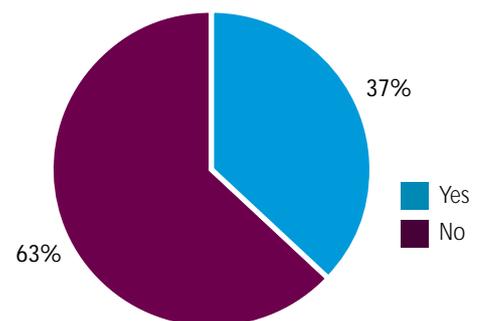
We asked individuals " In your view, is the Payment Mechanism working?"



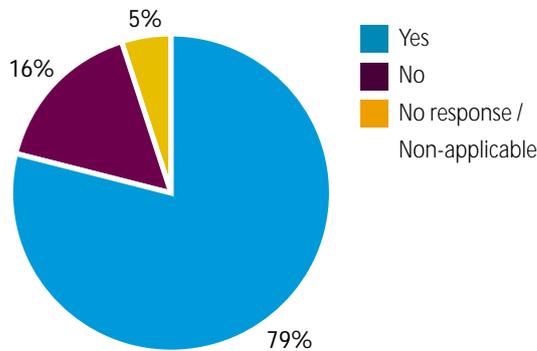
62 The 4ps review highlighted the question of how effectiveness is defined in the context of a partnership. The most widely held view is that the Payment Mechanism is there to incentivise performance, and the Local Authority should only pay for the services if those services are in line with the services specified. However, other views were expressed that the 'spirit of a partnership' is about service improvement and that this will not be achieved through penalising a Service Provider.

63 It was apparent that the desire to work in a partnering context had also led to some instances where the Local Authority was not enforcing the performance regime set out in the Contract. Examples were identified of Service Providers delivering a sub-standard performance, but suggesting that the Local Authority should 'sympathise with us'. 4ps believes that this latter view potentially blurs risk and responsibility.

We asked individuals " How do you view the Payment Mechanism: is it seen as a means of 'punishing' the Service Provider?"



We asked individuals " Do you believe the level of payment made in each period reflects the benefit delivered?"



64 The benefits of being able to incentivise performance through the Payment Mechanism were acknowledged on more than one occasion.

Director, Service Provider

" I have to report the status of this contract to my Board of Directors, who then in turn report to our shareholders. The desire and expectation of my fellow directors is that there are no deductions to the unitary charge we receive due to under-performance."

" Clearly if there are performance deductions, questions would be asked. To me this provides a clear incentive for us to perform."

65 4ps believes that over the long-term, the most sustainable partnerships will be those in which each party respects the underlying contractual requirements, but works in 'partnership' to resolve emerging difficulties and seek continuous improvement; achieving this 'middle ground' remains a challenge in some sectors.

Recommendation

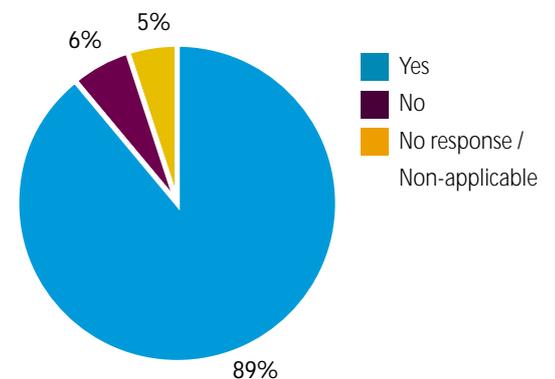
Improvements are needed to the development of the Output Specification, Payment Mechanism and performance monitoring regime in some sectors. As part of this, the performance regime needs to be properly thought out and tested, with the clear aim that once operational the performance regime and Payment Mechanism will be applied. 4ps will also address this as part of the updating of its sector specific procurement packs.

The Help Desk

66 Many Service Providers have in place a 'help desk', customer care system or 'call centre' to handle queries from the Local Authority or members of the public who are specifying that there is a performance failure. The help desk provides a single point of contact for enquiries, and can provide valuable assurance to customers.

67 Help desk facilities were available to nearly all of the projects reviewed. It was evident that the help desk facilities are working extremely well, and only a very small number of these had experienced problems.

We asked individuals " Are you aware of a fully operational help desk being available?"



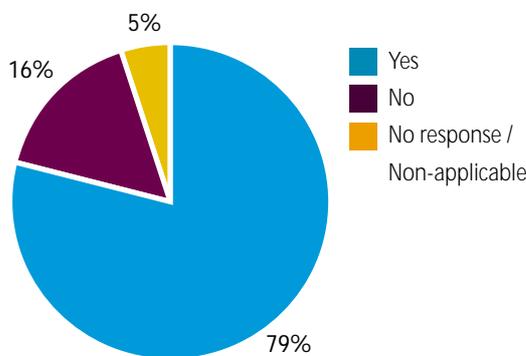
4. The Contract

68 The Contract sets out the terms of the agreement between the Local Authority and the Service Provider for the contracted services. The Contract is intended to enable Local Authorities to strike a balanced contractual position that is commercially deliverable for the Service Provider and can provide value for money for the Local Authority.

Understanding the Contract

69 The majority of those interviewed had read and understood the PFI Contract. Where this was not the case, the respondent was a service user of the facilities and did not need to understand the Contract.

We asked individuals "Have you as an individual read and understood the full Contract documentation?"



The role of the Contract

70 Some Local Authorities had recourse to the Contract during the operational phase; others had not looked at the Contract since financial close. Whilst there was some evidence to suggest that this reflected the 'partnering' nature of some of the schemes, it was also apparent that the desire to work in a partnering context had led to some instances where the Local Authority was not enforcing the contractual obligations.

71 Some three-quarters of the projects reviewed referred to some form of Partnering Board established to manage the partnership from a strategic perspective. This Board would meet monthly or quarterly and would seek, amongst other things, to deal with any contractual disputes in advance of triggering dispute resolutions in the Contract; to monitor the Contract and service delivery strategically; and to encourage effective communication at all levels within the partnership. 4ps review of operational projects indicates that the Partnering Boards are working very effectively.

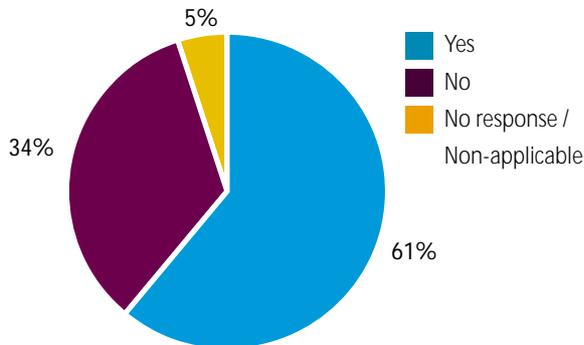
72 The involvement of equity/ funding partners in this arrangement was also noted as a benefit to partnership working.

Director of Service, Local Authority
 "I really have found the ability to turn to equity investors and financiers in the SPV we are working with as a very valuable mechanism to ensure performance standards are met. It's a good mechanism to have at our disposal."

"This is not to say that I am picking up the phone constantly to talk with them, because that is not the case; but we have had some problems with the performance of our Service Provider, which has meant that their unitary charge payment is at risk, and in fact we have made deductions recently due to consistent under-performance."

"The ability to discuss these issues with the wider SPV partnership has proven very useful. I don't want to make deductions, in fact far from it, but equally I am not going to accept a below-par service. We are very proud of this new facility for our community."

We asked individuals " Has the Local Authority had to refer to the Contract on any issue?"



73 A number of individuals stated that there had been interpretation issues with the Contract documentation, with a number of Service Providers and Local Authorities being unsure as to the meaning of certain statements. This appears to have resulted in a number of queries relating to risk transfer, and the validity of payment deductions.

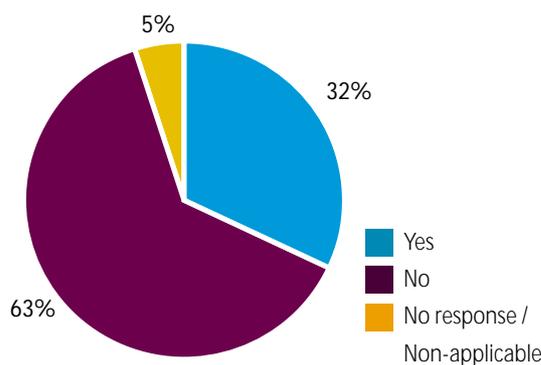
Recommendation

Appropriate 'challenge' should be undertaken on Contract drafting at the procurement stage, and due consideration given to potential service evolution and development.

Contract flexibility

74 A number of changes post implementation had been made to the Contracts for the schemes reviewed.

We asked individuals " Has your organisation negotiated any changes to the contract post Financial Close?"

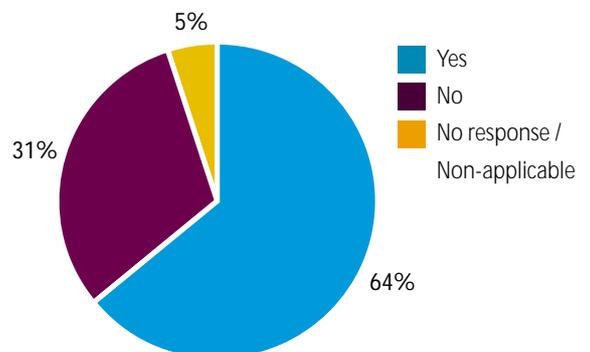


75 Many of those interviewed had been happy to agree verbally to changes in approach during the operational period, and the 4ps believe this demonstrates that the principles of partnering are working.

76 Where they did occur, variations to the Contract had generally been time-consuming, typically involving weeks of discussion before a position satisfactory to both parties was agreed.

77 Most Local Authorities and Service Providers believed that the Contracts in place were 'future proofed' against legislative change, but some concern was expressed that the Contracts did not offer sufficient flexibility (about one-third of those interviewed believed that the Contract negotiated did not offer sufficient flexibility).

We asked individuals " Do you believe that the Contract as negotiated offers sufficient flexibility in the provision of services?"



78 In the majority of the schemes reviewed, benchmarking and market testing had not been used by either the Local Authority or Service Provider in the provision of the contracted services. This was in the main a reflection of the Contracts not having reached the first benchmarking date. In almost all cases, those interviewed referred to provisions in the Contract which commit to either benchmarking and/or market testing in the near future, at say 3, 5, or 7 years into the Contract.

Recommendation

There appears to be the opportunity for improvement in the Contract drafting in relation to variations to the Contract. This will be looked at as part of the development by the 4ps of sector-specific Contracts.

Where changes are made, it is important that these are properly documented in the contractual documentation.

79 4ps believes that benchmarking could become a contentious issue when it arises. Drafting in the Contract will therefore need to be robust.

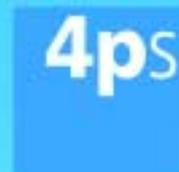
80 In some cases price changes in the market were putting pressure on Service Providers, and they reported that some Contracts were not as profitable as they had anticipated, perhaps reflecting the initial 'competitive' pricing. In a number of instances this had led to protracted discussions regarding variations to the Contract.

Contract clarification

81 A number of the schemes reviewed had experienced some form of Contract 'clarification'. Some of the reasons quoted included the following:

- Degree of design input
- Planning and site condition delays
- Cost of variations
- How to deal with regulatory change.

82 None of these clarification issues went to 'dispute resolution procedure', and instead were satisfactorily resolved by discussion, typically at the Partnering Board level.



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