

Shared resources – legal considerations for collaborative working

Q&A with [Emily Powell](#), Partner, Hugh James

Liability/indemnity

Where does liability sit if one Housing association carries out work on behalf of another but the work is substandard or unsafe?

The first port of call here is what does the agreement say? The apportionment of liabilities is one of the key terms you would expect the agreement to cover. In general, it will make each party liable for work it carries out. You may also include an indemnity against claims against you from third parties in the event that work has been sub-standard or unsafe. For example, if another HA is undertaking work in a tenant's home and the tenant is caused injury. In order to demonstrate that work has been sub-standard or unsafe the agreement should refer to the applicable standards so there can be no doubt about the standards required. If another HA is undertaking work that is high risk then this would suggest that a binding or hybrid agreement would be appropriate to deal with these risk issues.

Where does liability sit for sharing material and PPE equipment?

I think this question is asking who is responsible for ensuring that material and PPE is fit for purpose. Where material and PPE equipment is being supplied, I would usually include a warranty as to fitness for purpose which would mean that the supplier is responsible – although the intended purpose should be stated in the contract. However, if your employee is wearing PPE which has been supplied and is sub-standard this does not mean that the employee would not have a claim against you for any damage suffered. You would need to ensure that you could recover your losses, including legal fees, under the contract.

How would insurance work if activity resulted in personal injury to a tenants or employee?

This would depend upon the terms of the insurance. In the most general terms, you are free to organise your business activities. Provided that you have not been negligent in your choice of contractual partner, the fact that you have essentially sub-contracted to another HA should not affect your insurance – provided that it wouldn't with any other sub-contract relationship. However, if you are providing services that you have previously only provided in-house then you should ensure that the terms of your insurance extend to providing these services to third parties.

What are our obligation to continue to provide support in light of large staff shortages where sharing of staff doesn't provide adequate cover?

This is a very wide question and one that we could spend all afternoon on. Where obligations to provide support are statutory obligations then you will be required to continue to comply unless and until those obligations are relaxed or suspended by government – this week's announcements on MOT testing being a good day-to-day example. Where your obligations are contractual then this will depend upon the terms of the contract. Is there a force majeure clause? If so, does it cover pandemics and what are the stated consequences? Alternatively, the common law doctrine of frustration may operate to bring the contract to an end.

Data sharing

How do we share information regarding tenants, properties etc (eg people with vulnerabilities)?

Any sharing of personal data must still be in accordance with the requirements of the Data Protection Act 2018. There has been no relaxation of this in response to the current crises. This means that if the other party will be processing personal data on your behalf, a data sharing agreement must be in place before any sharing takes place. I know many housing associations have template agreements that they use for their supply chain and so it should not be too onerous a task to amend these for use in conjunction with a collaboration agreement. On the other hand, if you will be jointly controlling personal data then a data sharing arrangement should be in place. The requirements for this are less prescriptive than for a data processing agreement but it still should be in place before any data sharing takes place. And finally on this question, don't forget to check your privacy notices to ensure that they make provision for this type of sharing. If they do not then they may need to be updated and re-issued to the affected data subjects.

How do we provide reassurances about the handling of this info to tenants and those we're collaborating with?

The data sharing agreements I referred to in answer to the last question should provide the required reassurances in the context of your relationship with your collaborative partners. In terms of reassuring tenants, whilst not strictly a legal point, you may wish to consider sending out a short communication explaining the new arrangements you are putting in place, assuring them that these arrangements comply with the stringent requirements of the Data Protection Act 2018 and perhaps including a link to your privacy policy.