

6 tips to avoid contract disputes with suppliers

Our top tips for avoiding legal issues long after contracts are signed, including those quickly set up due to COVID-19.

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During the pandemic many schools had to move quickly to set up new deal with suppliers: from software tools used for remote learning, to enhanced cleaning services to keep settings as safe as possible from COVID-19.

Of course, though working in this way meant the risk of a contract being signed without proper care and attention was high – and indeed we have worked with many schools now having to resolve contractual disputes.

Even in 'normal times' though contracts with suppliers can be a tricky area for schools with plenty of pitfalls to be aware of. As such, here are some top tips to hopefully avoid any legal issues long after the ink has dried when you've signed on the dotted line.

Tip 1 - Do your homework

During the pandemic, some clients suffered from suppliers going 'bust'. This had a huge impact on the continuity of supply of services, often requiring alternative suppliers to be found very quickly.

In some cases, we identified that an insolvent supplier had lacked a good financial standing throughout its trading life. Had the schools investigated the financial standing of the other party prior to entering into the contract, some of those situations could have been avoided.

A few simple initial checks can reduce this risk:

- If the supplier purports to be a company, search on Companies House to check it exists on the Register. You can also establish who the directors and controlling shareholders are; the registered office address; the state of its latest accounts and, importantly, whether any strike off/insolvency action has been taken against the company.
- If the supplier is an individual or sole trader, you may be able to find some useful information about them on the internet. For example, the Individual Insolvency Register contains details of any bankruptcies, debt relief orders and individual voluntary arrangements.
- Credit searches can be undertaken through online providers to see if the supplier currently owe lenders, has missed any payments and whether any County Court Judgements have been made – all of which will evidence good/bad financial standing.

Tip 2 - Keep a written record of your contracts

Another issue encountered during the pandemic was that some education clients did not hold copies of key contracts or had not recorded, in writing, agreements made with suppliers (some of which were made on a handshake or on the phone – which is not advisable).

If there is an issue with a supplier and no written agreement exists, it can be more difficult to exit that relationship and schools open themselves up to contractual disputes, which can be costly and time consuming.

We therefore strongly advise schools to conclude all contracts in writing before services are provided (after having fully considered the terms), and to maintain a central record of all contracts entered into.

Within that record it will be vitally important to document: (1) when contracts are due to expire (so that schools can shop around for alternatives before the term has ended and/or negotiate a new, improved contract); (2) when payments are to be made; (3) the supporting rationale for any contractual decisions; and (4) all contract variations (as discussed below).

Tip 3 – Monitor progress and address any issues

We saw many situations during the pandemic where schools had failed monitor the supplier's obligations closely and failed to notify the supplier in the event of a breach.

Failure to address issues promptly can result in further issues for schools when trying to ensure performance of a contract. For example, if a supplier is allowed to continue breaching a contract's terms or if there is a delay in acting upon a supplier's breach, this acquiescence/delay may prejudice or even prevent the school's ability to do something about the issue subsequently.

Once a contract is up and running, consider appointing a key person as 'contract compliance officer'. This person should be familiar with the contract and should carry out regular checks to ensure the terms of the contract are being followed.

Keep on top of any slippage. If there are issues, ensure they are documented and dealt with. Documents could prove crucial in establishing liability in any future dispute.

Tip 4 – Work collaboratively with suppliers

Always remember that, in the event of a supplier issue, it is possible to re-negotiate the terms of a contract and work more collaboratively.

Throughout the pandemic we worked closely with education clients to vary contracts (so that they became workable) instead of terminating contracts (unless it was necessary). Over the last 18 months, variation became many clients' best option.

Schools can exercise their commercial judgement to agree variations to a contract, e.g. extending contractual deadlines or offering internal resources to support service delivery. Schools may also choose to offer financial support alongside commercial interventions.

This may include varying payment arrangements to ease supplier cash flow difficulties; offering payment for fixed costs; and/or making upfront payments.

Importantly, variations must be mutually agreed between the school and the supplier. They must also be carried out in compliance with the contract.

If you are considering varying the terms of a contract, check the contract for any mandatory variation procedures. In the absence of any variation terms, ensure that you keep a written record.

Tip 5 – Have a clear exit strategy

Where variation is not possible, it may be appropriate to consider terminating the contract.

We have seen many situations where schools have terminated contracts wrongly by not following the correct termination process specified in the contract (e.g. giving inadequate notice) and/or terminating the contract without proper grounds to do so (e.g. supplier breach).

This has resulted in claims against schools for wrongful termination.

Before terminating a contract, therefore, it is important to: 1) check the process for terminating; and 2) establish the legal grounds to terminate.

The consequences of termination can be far-reaching, often causing business disruption and impacting on budgets. Therefore, we strongly recommend that schools seek legal advice prior to terminating a contract.

Tip 6 - Is there a dispute resolution procedure?

Contracts often contain a dispute resolution procedure. This is often overlooked by schools.

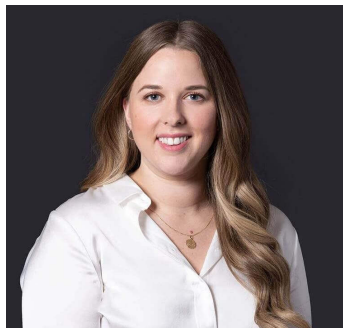
The dispute resolution clause usually specifies how the disputes are to be resolved. This may include a series of escalating stages through which the parties will attempt to resolve the dispute.

Generally, the parties are required to follow the procedure specified in the contract. This saves time and avoids incurring unnecessary legal costs.

Following the tips described above should help schools manage their current and future relationships with suppliers more effectively, thereby minimising the risk of a contractual dispute.

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