

Terminating a contract: what steps do Education providers need to take?

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Ending a contract can be a tricky task especially when you do not know where to begin. Contracts can be lengthy, wordy and a puzzle at times. The good news is whether you're dealing with a catering, cleaning or other service or goods contract the approach to termination largely remains the same. This article highlights some key points to consider when thinking about termination.

What does termination mean?

Termination brings a contract to an end and releases the contracting parties from their contractual obligations.

Why terminate a contract?

There are a number of reasons why you might want to consider terminating a contract:

- The contract is no longer profitable or commercially viable;
- A party is not adhering to the agreement;
- For convenience;
- Unforeseen circumstances (e.g. Covid-19 pandemic) which render the contract difficult to perform;
- The other party is insolvent;
- A party no longer requires the goods or services, or
- A party has come under new control or has been acquired by a competitor. Such a change in circumstances may reduce the benefit of the once commercially attractive agreement.

How to terminate a contract?

Prior to terminating a contract, it is important to consider whether you have legal grounds to terminate. This is to make sure that any termination is lawful and does not expose you (as the terminating party) to any liability for wrongful termination, which may allow the other party to bring a claim against you.

A right to terminate may arise as a result of:

- Common law; or
- A contractual term.

We briefly look at each route below:

Common law

Firstly, common law has long established that parties have the right to terminate on grounds of a 'serious' breach of contract. This is referred to as a 'repudiatory breach'. There is no set definition of what a 'serious breach' is, rather it is fact specific. Accordingly, a 'serious'

breach can be complicated to assess and that is why legal advice should be sought at an early stage and in particular, prior to termination, to clarify the position.

In practical terms, a 'serious' breach means a contracting party is not upholding (or has said it will not uphold) the main essence of the deal. Broadly, the breach of a fundamental term of an agreement that goes to the root of a contract will allow the innocent party to terminate.

It is important to note that whilst such a breach might give you (as the aggrieved party) the right to terminate and the right to claim damages, it does not automatically terminate the contract. If a right to terminate arises but you do not act upon it quickly by proceeding to terminate then you can be deemed to have 'accepted' the breach and waived your right to do anything about it.

The practical consequences of termination can be broad and extend into commercial realms, for example, business disruption and impacts on budgets.

Contractual term

Secondly, a contractual term may provide a party with a right to terminate for convenience or might require conditions to be met before termination can take place. For example, a contractual term may set out a circumstance which will give a party the right to terminate the contract. This can include conditions such as requiring a party to give notice of termination prior to a contract's end date to stop its automatic renewal.

In such instances, even though the contract expressly provides a right to terminate, the interpretation of such terms can be complicated. For example, a 'break clause' may permit termination, however before the term can be relied upon there may be conditions that need to be met. If these terms are not interpreted correctly, they can also result in wrongful termination. As mentioned above, this may lead to a claim against you if the other party disputes your grounds for termination or if you get the mechanism of terminating wrong.

Notice

In general, whether terminating under common law or a contract term, a party is normally required to give notice to the other party of its intention to terminate the contract, via an unequivocal communication.

If a party is terminating in accordance with a contractual term, generally the term will also provide the process for how the termination notice is to be communicated to the other party. This may be via a minimum notice period (e.g. must give thirty days' notice), the form of the notice (e.g. must be in writing), or a medium of communication (e.g. must be served by post).

Complying with these requirements can be complex and if a party fails to get it right, there is a risk that the termination might be invalid which can then expose you to a claim for wrongful termination.

Summary

As discussed above, there are a number of reasons why you might wish to terminate a contract.

Looking at the other party's conduct and the contract itself is a starting point which should help to identify whether you have the right to terminate and if so, how you go about terminating.

We regularly deal with disputes which involve the termination of contracts, in particular where termination goes wrong. The consequences of terminating a contract wrongfully can be substantial and so, it is important to seek advice prior to proceeding with termination.

This article is intended to highlight some of the key points to consider in relation to the termination of contracts. However, it should not be taken as legal advice and we would strongly recommend that specific legal advice is taken prior to the termination of any contract.

For more information, please contact either [Amba Griffin-Booth](#) or [Mia Plume](#).

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