



Academies : Contract Training

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What we will cover

- Contracts as a tool for managing risk
- The importance of clarity
- Easy wins and common questions
- Contract management and using your rights

Contracts : a Risk Management Tool



What is a contract and why getting it right is important

- Rights and obligations
- Enforceable
- Allocation of risk
- Expectation management
- Good governance



Is there a contract in place?



Negotiated, signed terms, signatory?



Partial terms, or heads of terms?



Exchange of e-mails, or even less?



Whose terms should you contract on?

- Procured on framework terms?
- Procured on bespoke terms?
- Contracted on counterparty standard terms?
 - Bespoke, complex services?
 - Fit for purpose and reasonable?
- Procurement rules?

The importance of clarity





Where do things go wrong?

- Mis-aligned commercial understanding
- Not reading or understanding the terms
- Ambiguous terms
- Are you in control of your obligations?

Drafting basics

- Comprehensive
- Logical and methodical
- Nothing left to the imagination
- ‘English comprehension’!
- Focus on what’s important in the context



Service Scope



**What is being done, by when, and by whom
(and what is not being done)?**



To what standard is it being done?



**What levers can be pulled to make sure it is
done to those standards?**

Payment obligations



Calculation mechanism



Payment terms



Adjustment

Easy wins and common questions



Term & Termination

- The risk of rolling contracts
- Break rights
- Termination for breach
- Specific termination rights – compliance?

Performance Management

- Clear expectations from the start
- KPIs - is everything measurable?
- Timing of payment – e.g. against milestones?
- Audit rights

Liability

- Caps
- Exclusions
- Specific inclusions?
- Symmetry?



Context-specific terms

- Safeguarding
- Intellectual property
- Data protection
- TUPE
- Freedom of Information
- Force majeure



Some 'old chestnuts'

- Who are the parties? (MAT not school)
- Endeavours – try or deliver?
- Reasonable?
- Indemnities
- Contract date (and 'back dating')

Contract Management





Using your rights

- Spend time on the molehills
- Importance of exercising your rights
- Diarise key dates
- Complying with the 'formalities'
- Recording and communicating your concerns

Change management

- Formality
- Clarity
- Consequences

Disputes

- Expensive and risky
- Evidence
- Insurance
- Legal support





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