

LSE Contract Guidance

1. Introduction

The purpose of this guidance is to give you, as an employee of the School, a steer on:

- What is a contract?
- When do we need a contract?
- Why do we need a contract?
- How is a contract put in place?
- The terms of a contract?
- Who in the School should authorise a contract?

You are probably aware that the realm of contract law is vast, often very complicated and at times inconclusive without the decision of a Judge. This being the case, the main purpose of this guidance is to get you to understand the importance of taking account of contractual law when you are involved in any kind of project management and to make you aware of who needs to authorise such a document on behalf of the School.

2. What is a contract?

There are many definitions of a contract, but essentially it is any agreement between two or more parties that can be enforced in a Court of Law. It may be based on a written or oral agreement, or in some cases, implied by your conduct. You will see in the section 'How do we put a contract in place?' below that a number of requirements need to be met for a contract to be considered legally binding.

However, be warned that the absence of a heading or statement to the effect of a document being a contract is not sufficient reason to deny the existence of such an arrangement. In many cases, informal agreements, Letters of Intent, Memorandums of Understanding and Terms and Conditions can be considered to be legally enforceable, and therefore contractual, agreements. Ultimately, a Judge will determine the existence, and/or interpret the meaning, of a contract. They will not, however, create a contract where one is deemed not to exist.

Our aim is to avoid any kind of contractual dispute in Court, so it is therefore important to address this area with sufficient effort and expertise at an early stage of the project in which you are involved.

3. When do we need a contract?

If you think you may need a contract, then you most probably do. Any kind of academic, administrative or business arrangement with an external party – be they an individual, company or other type of organisation – will need a contract in place. As is indicated in the section above, your actions or words may well be putting a contract in place without you realising.

4. Why do we need a contract?

You need only common sense to realise the benefits of having a clear and concise contract in place. It provides clarity, information, protection, and perhaps most significantly, helps the contracting parties to achieve their objectives and acquire benefit from the arrangement into which they have entered.

A contract can also reduce the possibility of a dispute arising, as well as set out how a dispute might be resolved. It can help us identify and deal with the level of risk that we may incur in, say, a building project, academic partnership or business deal. And in a similar regard, it can act as a mechanism to ensure ethical and responsible practice, and in some cases, such as field trips and overseas placements, help us perform our duty of care to our staff and students.

It is for these kinds of reasons that the School's Financial Regulations require us to put in place contractual arrangements for any kind of joint venture or commercial arrangement with an external company, institution or organisation.

5. How is a contract put in place?

Before you get into the detail of a contract, check with whom and why you are entering into a legally binding agreement. For instance, is the company, institution or organisation with which you are dealing genuine, of good financial standing and reputation? Does it or the arrangement or deal pose any risks to the School? Think about things like bribery, corruption, ethical practices and the location in which the contracting party will operate. You must also ensure that the arrangement or deal is in accordance with the School's business or charitable objectives, which are set out in its Memorandum and Articles of Association and Strategic Plan.

At the same time you ask these kinds of questions, you should check that you and the contracting party, as well as the arrangement or deal which you are putting in place, is in accordance with the School's procurement procedures. You can ask the Head of Procurement in the School, Glen Humbles (g.humbles@lse.ac.uk), or visit his team's webpage at www2.lse.ac.uk/intranet/LSEServices/financedivision/purchasing/Home.aspx for guidance on procurement and contract management.

For a contract to be recognised as being in place, it needs to have the following elements, some of which, if they are not properly considered, can lead to some quite detailed analysis if they become the subject of a dispute:

- There must be consideration, or something of value that must be exchanged in the arrangement. You should take note that the following case law definition of consideration, which was actually established in an 1875, is much broader than it being something of monetary value: it defines consideration as "...some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."
- The parties to a contract must have an intention to create a legal relationship.
- The parties must have capacity to enter into a contract (i.e. be of an adult age and sound mind).

- An offer must be made (not necessarily in writing).
- There must be acceptance of the offer (again, not necessarily in writing).
- The contract must be legal; you cannot contract your way around or out of legislation.
- Similar to the above bullet point, the contract must not conflict with common (i.e. 'Judge-made') or statutory (i.e. 'Government-made') law, or contain what is known as a mistake, which is usually based on a factual error or a misunderstanding.

You should start thinking about the terms of a contract at the earliest possible opportunity, not least because you and the other contracting party will need to reach agreement on its contents, and this process can take time. The next section sets out some of the important terms which should normally be included in a contract.

You can, at any time, seek advice from the School's Legal Team (contact Kevin Haynes, k.j.haynes@lse.ac.uk, or Caroline Hong, c.hong2@lse.ac.uk) which can give you advice and/or consult the School's lawyers, if external advice is considered necessary.

6. The terms of a contract?

The terms of a contract are obviously dependent on the arrangement to which it applies. The School recognises two kinds of contracts, its own standard terms and conditions contract, which are normally used for agreements with suppliers of services, and non-standard contracts, which cover just about everything else we do, from academic partnerships to property deals.

It is not unusual for non-standard contracts to be long, complicated and biased in favour of the body that drafted it. You should not be afraid to question, clarify, suggest changing or seek advice on a clause or term that you are unable to understand or you think is unfair or problematic. Indeed, it is often the case that the School is presented with what an external organisation deems to be a standard contract, but about which it has relatively little knowledge because it was drafted so long ago.

Although the substance and duration of a contract is dependent on a particular arrangement or deal, there are nevertheless some standard clauses which appear in most contracts, and if they do not appear, probably should do. We have tried to set out the subject matter of these clauses in the list below, although you should not view it as checklist to determine whether a contract is complete. A contract should usually contain the following:

- A heading or title.
- A statement to confirm whether the contract is legally binding, or not.
- The name and address of each party, as well as a registration number in the case of a limited company.
- A glossary of terms.
- The start and end date of the contract.

- A description, including dates, places and prices, of the product, service or arrangement between the contracting parties. You should think about these points for the duration of the contract: for example, will any expenses, costs or prices remain the same over time?
- The responsibilities of each party, including any deadlines and payment terms.
- Indemnity and liability clauses are very important. Contracting parties will often, and unfairly, use a contract to try to protect them against profit loss or to avoid liability or damages. You should note that under UK legislation, any party to a contract will be liable for death or personal injury that is caused by negligence on its part.
- Force majeure, which excuses a party not performing its duties or obligations if it was caused by reasons out of its control, like weather conditions or terrorism.
- Any sub-contracting arrangements.
- Any third party rights under the contract (these are often excluded in a contract).
- Confidentiality of documents or other materials, including our duty to disclose documents if we are required by law to do so.
- Intellectual Property arrangements.
- A dispute resolution process to try to avoid legal action.
- How amendments can be made to the contract.
- Any waiver or non-waiver clauses, which essentially deal with circumstances in which duties or obligations can be overlooked or removed, and if they are, how these actions affect the rest of the contract.
- How the contract can be terminated, including the period of notice.
- A contract renewal process – beware of automatic renewals.
- Jurisdiction under which the contract will be governed – overseas law is likely to be different to our own, and certainly more costly to resolve a dispute under.
- A properly authorised signature of each party (see below for the School's authorisation arrangements).

7. Who in the School should authorise a contract?

Ultimately, the members of our governing body, 'Council', are our 'Accountable Officers'. Under company law they constitute our Board of Directors; under charity law, our Trustees. However, Council has, for practical reasons, delegated its day-to-day responsibilities for legal matters to senior employees of the School. They comprise:

- the Director of the School, Professor Julia Black (j.black@lse.ac.uk) and School Secretary, Andrew Webb (a.webb@lse.ac.uk), both of whom can sign any legal document and delegate authority to others to sign legal documents provided certain conditions are met;
- the other members of the School's Management Committee, who are Professor Paul Kelly (p.j.kelly@lse.ac.uk), Professor Eric Neumayer (e.neumayer@lse.ac.uk), Professor David Webb (d.c.webb@lse.ac.uk) and Dr Andrew Young (andrew.young@lse.ac.uk), and the Director of Research

Division (d.coombe@lse.ac.uk), who can sign legal documents that concern business that falls directly under their areas of responsibility, provided certain conditions are met; and

- the School's Director of Human Resources Division, Dr Indi Seehra (i.seehra@lse.ac.uk), who along with the Director of the School, must sign letters of appointment that include the School's terms and conditions of employment.

Note also that the Director of Finance Division, Mike Ferguson (m.ferguson@lse.ac.uk) must be notified of contracts that involve a sum of £500,000 or more being paid or received by the School.

You should also send any of type of contract that involves a financial or revenue raising commitment or transaction, to our Director of Finance, Mike Ferguson (m.ferguson@lse.ac.uk), to ensure the arrangement is in accordance with our Financial Regulations.

You can contact also contact Kevin Haynes (k.j.haynes@lse.ac.uk) or Caroline Hong (c.hong2@lse.ac.uk) in the Governance, Legal and Policy Division for general advice on contracts.

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