

Risky Business? Common Problems for Contractors

Risky Business?

In any contracting business things can go wrong and you may need a lawyer to resolve disputes and problems when they do. How can you keep out of the lawyer's hands? John Gould, senior partner at Russell-Cooke Solicitors runs through some of the areas which, in his experience, cause problems for contractors and explains how you might avoid them.

As the old proverb goes – a stitch in time saves nine. This is certainly true of legal risk. A small amount of prevention can save a large problem later. That problem may not just be about money, it may involve a significant disruption to the business or even on occasion the risk of criminal sanctions. So what would be on my checklist of legal risks?

Liability for Health and Safety

Serious accidents are of course mercifully rare and it would be unusual for a business to overlook the need for insurance against employer or third party liability but sometimes insurers are able to deny cover because of mis-declarations when the policy is taken out. There may be inappropriate exclusions in the policy chosen. Do you have the right policies and do they say what you think they do? Serious health and safety failures may carry a risk of criminal prosecution and conviction for managers as well as companies. It is essential if a disaster does occur not to lose sight in the midst of the crisis of the recriminations which may follow. You need to get early advice.

Disputes with Customers

Most businesses will be familiar with disputes about timing, price, specifications etc. and with the battles over payment which follow.

Sometimes there seems no option but to make an uncomfortable compromise to avoid being dragged into costly and time consuming disputes. In my experience there are two key ways of improving likely outcomes. First put effort into the formation of the contract. You need to make sure that you have the right terms and that you have made those terms the contract which applies. Secondly when trouble develops you need to put in more effort and move quickly. This is particularly true of delays in getting paid. Sometimes you do need to escalate very quickly into legal or insolvency proceedings if you are not to end up a disappointed creditor in a liquidation.

Employees and Contractors

If contractors are treated as self-employed but in law they are employees (factors include the level of control the business exerts over them, the fact that the contractor works for no-one else, the fact that the contractor is under an obligation to work etc.) then there is a risk of an Employment Tribunal claim and/or a tax claim for unpaid PAYE and national insurance. Dealing with unexpected Tribunal claims can be a nightmare and the normal limit of liability of £63,500 does not apply to some types of claim such as discrimination for which damages are unlimited. If you haven't identified someone as an employee you are less likely to treat them in the way the law requires. The attention of the Revenue may go beyond routine communication with your accountant.

You need to make sure that contractors are not employees and that employees are always provided with terms of employment (this is a legal obligation). The situation may change over time so you need to keep things up to date. You must have procedures in place to deal with employment issues. There are a range of services available from lawyers and others if you don't have your own personnel department.

The law protects whistleblowers and you may find life becomes uncomfortable if you put off dealing with certain problems because they seem too difficult. Information from disgruntled employees is taken very seriously if, for example, they allege VAT irregularities.

The conclusion is obvious. Putting early effort into getting your legal structures and documentation right may well prevent very serious and costly problems from developing. If a problem does arise you need to get advice quickly before you do anything which makes it worse. You may get by for years simply using common sense but eventually luck will run out and in some cases your whole business may unravel. A stitch in time...

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