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Commercial Education Brief Winter Edition 2024

In this Edition

- New in 2024 – a rundown of legislation you will want to know about;
- Supplier relationships - how good are your contracts terms?
- Cloud services are under review by the CMA

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"First-class legal advice, a firm which understands its clients and fosters an exceptional working relationships."

The Legal 500, 2024

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Welcome to the Winter 2024 edition of Commercial Education Brief

Welcome to the Winter 2024 edition of Commercial Education Brief. In this edition we mark the start of a new year with an important article previewing legislation coming down the line that will have an impact on all education businesses, large and small. Brexit has provided the opportunity for the UK government to take steps to reform key areas of our legal system including public procurement and data protection. With the Online Harms Act also requiring attention in some businesses we hope that the commentary we provide will be found useful.

If you have tried to move cloud providers and found the experience over-complex and possibly even too expensive, you will want to read our article on a current competition and markets investigation into the provision of cloud services.

You may have noticed the role played by Freeths in Mr Bates v The Post Office. The case required challenging the Post Office not just in relation to technology malfunctions but also the very contract terms that "entitled" the Post Office to be paid revenue shortfalls. We explain the importance of understanding when a contract is "relational" in practice and what that means.

Also in this edition, we provide you with help in understanding contracts you may enter into with suppliers and customers – what are the terms and conditions you need to be particularly wary of? We share our experience with you. As always, we provide data protection and Dot.Gov updates in areas that we think will be of interest.

Please share Commercial Education Brief with your colleagues and if you would like to discuss any matters affecting your business do get in touch.

Frank Suttie
Director - Commercial

0345 128 6996
0778 611 4339
frank.suttie@freeths.co.uk

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Meet the Commercial Education Team

Frank Suttie
Director - Commercial

0345 128 6996
0778 611 4339
frank.suttie@freeths.co.uk

Andy Francey
Partner - Corporate

0345 166 6252
0777 318 4462
andy.francey@freeths.co.uk

Luke Dixon
Partner - Commercial

0345 404 4162
0797 388 9778
luke.dixon@freeths.co.uk

Andy Maxwell
Partner - Competition & Subsidy Control

0345 128 6997
0792 160 3226
andrew.maxwell@freeths.co.uk

Emma Brooksbank
Partner - Immigration

0345 166 6300
0797 425 7071
emma.brooksbank@freeths.co.uk

Stephen Pearson
Partner - Commercial

0345 274 6900
0781 003 4917
stephen.pearson@freeths.co.uk

Lindsey Clegg
Partner - Dispute Resolution

0345 030 5793
0773 802 3291
lindsey.clegg@freeths.co.uk

Will Richmond-Coggan
Partner - Dispute Resolution

0186 578 1004
0797 138 0744
william.richmond-coggan
@freeths.co.uk

Joshua Day
Associate - Commercial

0345 404 4116
0797 381 4198
joshua.day@freeths.co.uk

Rob Smedley
Director - Employment

0345 030 5806
0797 386 9063
rob.smedley@freeths.co.uk

New for 2024 – legislation to be aware of and plan for

In 2023 there was quite a bit of media comment about the lack of legislative activity in Parliament. Whilst the number of bills passing through Parliament was less than might usually be the case, what we have seen as we move into 2024 is a significant number of legislative measures that will affect businesses in the education sector during 2024. Here is our run down of what to expect:

We have an Online Safety Act 2023

This much delayed and controversial legislation finally reached the statute book in the Autumn. Complementing but not replacing data protection laws the legislation will be overseen by Ofcom.

The legislation can apply to all businesses who provide online services – large and small. If the service provided allows for creating and sharing content online or interactions with other users, the Online Safety Act applies. Edtech businesses that include forum type functionality within the service provided will want to look at the legislation more closely.

By way of example an app designed to support creative or science curriculum subjects may allow for images of artwork or experiments to be uploaded, facilitating critique and other interactions by fellow students and teachers. With gaming style educational apps increasingly coming into use its important to note that these will also be in scope if interactive in their nature. 2024 will bring about a lot of new terminology to get used to – here the services covered are described as user to user or U2U.

An exemption is provided for services provided by UK education and childcare providers. Exemption is possible due to pre-existing safeguarding duties. It is possible that a service provided to a school where the overall functionality of the service is monitored and controlled by the school with no interactions external to the school, will meet the criteria for exemption. We will be covering this issue in greater detail in the next edition of Commercial Education Brief. The law is due to have full effect towards the end of 2024.

Public procurement is another subject for reform with the Procurement Act 2023

An important compliance requirement for public bodies is to ensure that they act fairly and transparently in procuring goods and services. For procurements above specific values ("thresholds") there has to be compliance with public procurement rules. Threshold figures are regularly reviewed and updated by the Cabinet Office. Current values can be found here.

The Procurement Act aims to reform our public procurement rules in order to provide a quicker, simpler, and more transparent process. There is expected to be greater emphasis upon value for money, effective competition and with greater assurance around the selection of a winning bidder by reference to objective criteria. Education businesses that have experience of formal public procurement procedures are likely to welcome any improvements to the system. But as the Public Accounts committee has noted (see Dot.Gov article here), success in transformation of working practices will require training and the availability of the right tools to support high quality procurement processes.

The legislation is likely to have effect from October 2024 – the government has committed to giving six months' notice of implementation and ongoing procurements at that time will still continue under the previous rules. A short guide to the Procurement Act 2024 can be found here.

Next up: Data Protection law reform

Currently making its way through Parliament is the Data Protection and Digital Information Bill. Having passed through all stages in the Commons, the bill is now at committee stage in the House of Lords. As with public procurement, the government is taking the opportunity to introduce modernisation and reform of the legislation concerning the way in which personal data may be lawfully processed by third parties, be that a business, a charity or in the public sector.

As an added bonus, the legislation will also address a number of reforms that will be welcome in the increasingly digital world in which we live – with important legislation covering digital signatures and seals (for the first time making it easier for local authorities to enter into contracts digitally). The tricky issue of how to establish reliable age verification systems is also a subject for the bill.

Looking specifically at how data processing activities are addressed there will be new legislative provisions covering:

1. The use of personal data in research activities

2. Reform of the scope of "lawful basis" in the processing of personal data with a number of amendments to be made to regulation 6 of UK GDPR

3. The practice of placing cookies on a user's computer or other device is to be subject to a new legal regime

4. An important change in the area of consents to data processing which enable the introduction of technology to allow a visitor to a website to declare automatically consents or refusals of consents – the detail of this to follow through a statutory instrument

5. Representative bodies (for example professional and trade association) are to be encouraged to develop marketing codes of practice which will need to be provided to the Information Commissioner's Office for approval and which are thereafter to be applied by members of the organisation – this being a basis upon which legitimate marketing practices specific to a particular business sector can be established

6. Reforms to the Information Commissioner's Office and its powers – in future the organisation is to be known as the Information Commission

7. Reforms in the area of biometric data

8. The introduction of new terminology to replace Data Protection Officer with "Senior Responsible Individual".

Presenting a mixture of entirely new features to the way in which digital and other personal data is protected and completely new legal rules covering other aspects of digital information and its use makes for this being a complex legislative measure. The legislation has a range of requirements for further consultations and then the laying before Parliament of regulations – its likely implementation date should not be expected before the end of 2024 but Freeths believes that advance preparation for a number of the changes expected will be important and more will be said about this in coming briefings.

A brief introduction to the Bill is in this edition and can be found here.

The Digital Markets, Competition and Consumers Bill 2023 is also on its way

Regular readers of Commercial Education Brief will have already seen our introductory article on this legislation, see our previous edition here. The legislation has passed all Commons stages and is at committee stage in the Lords. If your business has digital products and services sold to consumers as well as to schools and colleges (particularly on a subscription basis) this legislation will affect the working practices that you apply. We focus on the issue of subscription services elsewhere in this issue and a number of other articles covering other aspects of this legislation will follow in coming editions.

And we should not close without reference to the regulation of AI

Many readers will be aware that the European Union has dedicated significant legislative time to the challenge of legislating in order to provide a framework for the appropriate use of artificial intelligence where this has or is likely to have an effect on individuals. A risk based approach is being taken within the legislation which, at the end of 2023 finally achieved approval from all necessary EU institutions.

As with data protection, where EU GDPR has had a very significant influence over the development of data protection laws globally, the EU will be keen to see their approach to the issue of AI governance replicated. We can expect to hear more about this sensitive issue (particularly as we are in an election year) from those in power and those who would like to be!

Frank Suttie
Director - Commercial

0345 128 6996
0778 611 4339
frank.suttie@freeths.co.uk

Selling your products by subscription: New rules you need to prepare for

The soon to become law Digital Markets, Competition and Consumers Bill 2023 ("DMCC Bill") has been long awaited, particularly due to its three-pronged focus on tackling issues and enhancing areas surrounding consumer protection, competition law and digital markets.

In the previous edition of our Commercial Education Brief, we outlined the key features of the DMCC Bill and what it means for businesses. In this article, we will be going one step further, homing in on the consumer protection angle of the DMCC Bill, and what this means in the context of subscription contracts.

What are subscription contracts?

Subscription contracts have become a valuable part of our day to day life. Consumers increasingly amass a range of products and services including gym memberships, food delivery, content streaming, and online news on a subscription basis.

The DMCC Bill defines a subscription contract as one that has been entered into between a consumer and an organisation for the supply of goods, services or digital content that meets either or both of the following criteria:

- it automatically renews for an indefinite period (i.e., unless the consumer takes action to terminate the subscription contract or prevent its renewal); and/or
- it contains a free trial/reduced-price period following which the consumer will be liable to make payments, or payments at a higher rate than the reduced-price period, unless the consumer takes action to terminate the subscription contract,

in either scenario, the DMCC Bill makes clear that the consumer must have a right to terminate a subscription contract without incurring a penalty that is more than nominal.

The DMCC Bill also outlines contracts that fall outside of the definition of a subscription contract. Examples include contracts for the supply of childcare and school-age education, insurance contracts, and medical prescriptions.

Pre-Contract Information

Where an organisation enters into a subscription contract with a consumer, it must provide the consumer with "key" pre-contract information, and thereafter provide (or make available) "full" pre-contract information. Examples include:

Key pro-contract information	Full pre-contract information
The subcription contract's auto-renewal mechanism	The main characteristics and details of the online content, good and/ or services
The frequency of payments	The organisations contact details and identity
the minimum amount payable on each occasion	A reminder of the consumer's statutory rights
Any changes to the frequency of payments or the amount payable	
Any option for the organisation to make changes	
The charges that apply after any free trial/ reduced-price period	
A summary of the consumer's cancellation rights	

The DMCC Bill makes clear that key pre-contract information must be given: (i) in writing, (ii) separate to full pre-contract information, and (iii) as close as possible to the time that the subscription contract is entered into.

Reminder Notices

Organisations are informed that they must issue reminder notices to consumers explaining that the subscription contract will continue, and consequently, that renewal payment(s) will be due unless the consumer takes action to end the contract.

The frequency of reminder notices is contingent on when payment is taken in relation to the subscription contract. For subscriptions that require payment every 6-months (or more frequently), reminder notices must be issued at least once every six months. Where payment is taken on a less frequent basis (i.e., less than every 6-months) reminder notices must be issued for each renewal payment.

The DMCC Bill states that reminder notices must:

- include information that is reasonably similar to the pre-contract information; and
- not be used for marketing purposes.

Termination of subscription contracts

The DMCC Bill provides greater regulation in relation to ending subscription contracts.

Termination

Termination of a subscription contract may be undertaken by a consumer who does not wish to exercise their right to renew.

Organisations are required under the DMCC Bill to ensure that a consumer can terminate a subscription contract without having to take unreasonable (or unnecessary) steps. Indeed, organisations must also acknowledge any request by a consumer to terminate their subscription, including any refund that may fall due as a result of any overpayments.

For subscription contracts entered into online, organisations are obliged to permit a consumer to exercise their termination right online and must provide instructions for terminating in an accessible location.

Cancellation

Cancellation of a subscription contract may be undertaken by a consumer who wishes to end a subscription where an organisation has breached rules under the DMCC Bill; and/or where the consumer wishes to exercise their rights under any cooling-off period.

- **Breach by an organisation.** It is an implied term under the DMCC Bill that an organisation must provide all key and full pre-contract information, reminder notices and assistance with the smooth facilitation of termination of a subscription contract. Where an organisation fails to comply with these obligations, a consumer may cancel the subscription contract.
- **Cooling-off period.** Consumers can cancel a subscription contract within an "initial cooling-off period" of 14 days of entering into the contract, as granted to them under the DMCC Bill. Alternatively, consumers may cancel a subscription contract during any "renewal cooling-off period", which starts on the day which a "relevant renewal" takes place and similarly, ends 14 days after. Examples of a "relevant renewal" include:

  - When a consumer becomes liable for a renewal payment following a free trial/ reduced-price period

  - When a consumer becomes liable for a renewal payment in respect of annual subscriptions (i.e., one-off annual payments); or

  - When a consumer becomes liable for a renewal payment, but no further payments are due thereafter and the contract continues for 12 months or more.

Enforcement

The DMCC grants the Competition and Markets Authority **(CMA)** greater investigatory and enforcement powers in respect of consumer protections, which will permit the CMA to make requests for, and obtain access to, equipment and information from organisations where they believe an infringement has occurred.

Following investigation, the CMA will be able to impose penalties in respect of organisations failure to comply with consumer law or its own investigatory requirements. Such penalties may be up to 10% of global annual turnover for a consumer law breach, or up to 1% of global turnover where an organisation provides information that is "materially false or misleading" during an investigation.

Key Takeaways

The UK Department for Business and Trade **(DBT)** estimates that consumers spend £1.6 billion per year on subscriptions they do not want, with such unwanted spending arising out of unclear terms and conditions, complicated cancellation policies and organisations overestimating the ability of consumers in remembering to cancel their contract.

Organisations can certainly expect more regulatory action, particularly given the increased powers awarded to the CMA and the right to impose penalties following an investigation of non-compliance.

Those organisations that operate subscription-based models should undertake a review of their existing terms and conditions (with a view to updating where needed) to ensure compliance with the new requirements set out in the DMCC Bill. For organisations that supply subscriptions online, particular attention should be given to how information about the subscription arrangements is provided directly to the subscriber and how to terminate the subscription is displayed, through a customer dashboard or similar.

A re-assessment of best practices and policies in relation to subscription contracts may well be on the horizon!

This article is part of a series of articles on the DMCC Bill. Please find the other articles published earlier which form part of this series:

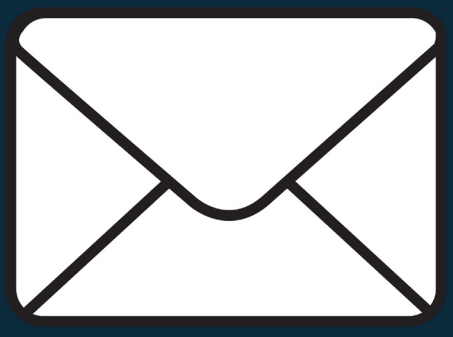
The Digital Markets, Competition and Consumers Bill 2023 is on its way!

Joshua Day
Associate - Commercial

0345 404 4116
0797 381 4198
joshua.day@freeths.co.uk

Coming Soon! The Free Freeths Northern Education Forum

Over the past few months we've discussed with clients and other connections, the value that could be derived from a forum for education businesses in the North of England. With guest speakers, presentations on important legal developments and a chance to discuss with other industry participants, matters of the moment, we will be welcoming you to our Central Square Leeds offices for the first forum meeting in late April. Watch out for an invitation in the near future. Meetings will be held on a quarterly basis and will be free to attend.



Dealing with suppliers – points to watch for in your contracts

When dealing with suppliers the thing you will most likely focus on is having a great relationship.

Conducting business in a friendly and accommodating way is a sure way to engage in a lasting relationship that is of value to both the supplier and you, as a customer.

As suppliers you should also see the same behaviours directed at yourself – evidence of real interest in your business and its potential and a real determination to retain your custom.

The fact that the relationship can only exist in practice if there is a legally enforceable contract between you and your supplier often becomes an incidental – tucked away in a drawer and rarely reviewed, far less discussed.

But if that contract needs to come out of the drawer and something in it really counts in a dispute that has unexpectedly arisen - how will you fare?

This article is about taking the time to make sure that some of the most frequently encountered legal issues are well looked after in your negotiations. We focus on your relationship with suppliers in this article. In the next edition we turn the issue on its head and look at contracts with customers.

Point 1: Are you protecting your confidential information?

All contracts are likely to address the issue of confidentiality but experience shows that there is often too little focus on the detail of the confidentiality clause – and it is detail that counts. In its narrowest form the clause may be drafted to say "this agreement and information in the agreement is to be treated as confidential".
Sometimes it is a good idea to treat the existence of the agreement as confidential but look at what this is not covering! No reference to your business plans, trade secrets or the financial arrangements that you might later put in place as your relationship with the supplier develops.

It's a long-settled point of law that if you start discussing issues you regard as confidential without contractually buttoning down confidentiality you might as well send the same information to a journalist. It's for this reason that NDAs are so important when beginning negotiations but remember that more business-related information is likely to be shared with suppliers going forward and that information needs protection.

Point 2: Are you going to receive deliveries when you need them?

If you are going to request periodic deliveries from your supplier, keeping track of available stock and doing re-orders becomes something of an art. What you cannot afford is to have regular instances of "out of stock" appearing on your sales system.

Should you find yourself locked into a supply agreement which has exclusivity for the supplier (meaning you cannot go elsewhere) there are easy ways of addressing this issue – through the use of sales forecasts. This allows you to provide data concerning orders you expect to place without the order being binding. The agreement can then provide that where your orders are within the parameters of the forecast should the supplier fail to commit to delivery within the agreed timescale you can go elsewhere (or even after repeated problems of this kind end the contract or the exclusivity).

Point 3: What warranties are being provided?

Look carefully at the warranties and any conditions you are expected to comply with if you later want to enforce a warranty. There will most likely be a requirement to inspect goods within a limited time following delivery – but make sure that this does not require you to take unreasonable steps such as unpacking and checking items individually where this would be impracticable. There may be requirements around the conditions in which goods are stored before use or sale onwards and these should be expressed in a way that is practicable for you to comply with.

Point 4: The goods are being shipped into the UK from overseas – what should the contract say about that?

The contract may say surprisingly little – rather it may refer you to the latest edition of Incoterms. These are standardised terms and conditions (with various options to suit particular circumstances) under which the logistical process of getting goods from the factory gate to your premises are covered off legally. Incoterms provide a standardised basis for agreeing who takes responsibility for matters such as insurance at the various stages of the journey, responsibility for onward carriage after the goods arrive in the UK and so on. It's important not to agree the choice of option given by the manufacturer without understanding the implications and being comfortable with the responsibilities you will have.

Point 5: What rights to terminate a contract should I have?

A right to terminate could be important if you lose confidence in the supplier at a crucial point when delivery of an order is about to occur. This will be even more significant if you are required to make a payment for the goods or provide a letter of credit prior to delivery.

The contract will usually provide a range of "boilerplate" termination events but you may want to see some bespoke terms specific to the commercial relationship that you are to have with the supplier.

This could include an automatic right to terminate if a number of deliveries are late or the supplier breaches a material term of the contract (such as the confidentiality obligation where perhaps sensitive information is shared with a competitor.

Take care when considering terminating as there is a legal rule described as repudiation – circumstances in which you think you have the right to terminate but the threshold for, say, material breach to be alleged is found not to exist. This can lead to claims successfully being advanced against you e.g., if you have refused to accept delivery of goods. Legal advice in this area can be crucial.

Point 6: Make sure the contract is actually signed

It's easy to work through the process of negotiation only to have fatigue set in – or complacency on the part of the supplier that you are "in the bag". The supplier might also feel that if the contract isn't signed it allows for a number of possible get out of jail cards, if the supplier does not want to or cannot deliver all the commitments presented in the contract. Holding a signed copy of the agreement (electronic signature is usually fine) should be the final objective of the negotiation process.

When seeking to have the contract signed, ensure that the individual handling it holds a sufficiently senior position. This will give you confidence that there is corporate authority backing the signature. It wouldn't be the first time a business attempts to evade liability because its internal rules for granting authorisations were not adhered to.

The UK's Data Protection and Digital Information Bill – what is the anticipated impact on the education sector?

The UK Government has proposed a new Data Protection and Digital Information Bill (the "Bill") to reform and strengthen the UK's data protection laws.

The Information Commissioner's Office (the "ICO") has welcomed the new Bill, saying that it supports the government's ambition to enable UK organisations to grow and to innovate whilst maintaining high standards of protection for the data rights of individuals.

While the Bill does not propose a complete overhaul of existing data protection laws, it would introduce a number of changes that should make the processing of personal data more straightforward.

Scientific research

The Bill introduces a new definition of scientific research which includes processing of personal data for the purposes of 'any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity.' This explicit acknowledgement that research can be for commercial purposes is likely to be a welcome change for universities and other higher education institutions across the UK.

Legitimate interest

One of the biggest changes proposed by the Bill is the clarification provided regarding 'legitimate interest' and its recognition as a lawful purpose for processing personal data. The Bill no longer requires a balancing test to be conducted against the rights of data subjects where the legitimate interests relied upon by an organisation is 'recognised'. This includes, among others, processing for national security, crime prevention, protecting vulnerable people and democratic participation. The Secretary of State is also given the power to add to this list, where it deems it necessary.

This is a beneficial change for universities, academies and schools alike when it comes to minimising internal administration time by providing a guide which enables a greater understanding of when legitimate interests might be appropriate as opposed to applying the tasks in the public interest test.

Record keeping

The revised record keeping rules introduced by the Bill offer a further opportunity to alleviate administration time and costs within businesses. The Bill proposes a new regime which means that record keeping duties will only apply where processing is 'high risk', therefore doing away with the current requirement to keep records of all processing activities. This will undoubtedly reduce administrative pressures on data controllers and their processors.

For Data Protection Officer read Senior Responsible Individual

The Bill substitutes the role of the Data Protection Officer with that of the Senior Responsible Individual (the "SRI"). Organisations, therefore, will be required to appoint an SRI who shall be responsible for data protection compliance when the Bill takes effect. Unlike Data Protection Officers, SRIs are required to be a member of staff who is a member of the organisation's senior management. Many schools – faced with the challenge of the mandatory requirement to have a Data Protection Officer have outsourced that role as currently permitted by UK GDPR. For these organisations there will need to be a rethink about the overall strategy in managing data protection compliance.

Relaxation of cookies

It is proposed that consent will no longer be required for online trackers, such as cookies, to be placed when visiting an organisations website. This would permit data to be collected without the data subject's consent where this is: (i) for the purposes of collecting statistical information in order to bring improvements; (ii) for the installation of necessary security updates to a device; and (iii) to locate an individual in an emergency.

Key takeaways

The Bill does not present a major overhaul of data protection laws in the UK and it will be important that any reforms adopted do not impact upon adequacy decisions such as that taken by the EU – ensuring, in consequence, that personal data can transfer across borders with very limited additional legal compliance requirements.

At the date of this article, the Bill is at the Committee stage in the House of Lords and is expected to enter force later in 2024.

Kaitlin Traynor
Associate - Commercial

0207 440 5891
0792 986 6464
kaitlin.traynor@freeths.co.uk

Luke Dixon
Partner - Commercial

0207 440 5177
0797 3889 778
luke.dixon@freeths.co.uk

When does a contract become relational? The case of Mr Bates v The Post Office

Whilst the main points of emphasis have been around the institutional obstinacy and divide and rule tactics applied by the Post Office against its postmasters, you will have noticed regular references to the fact that any shortfalls are the postmaster's responsibility. That was regarded by the Post Office as a fundamental term and its enforcement became a key tool in its Horizon strategy for managing the numerous situations that arose where the Horizon system threw up accounting anomalies.

As part of the case taken on by Freeths on behalf of the first group of former postmasters contesting the way they had been treated, the contract terms signed up to were brought into question. The nature of the relationship between the Post Office and its postmasters were established through these proceedings to be a "relational" contract. This became an important finding as it opened a door to successfully challenging the very basis upon which vast amounts of personal funds were demanded from postmasters by the Post Office.

Relational contracts have historically had a limited place in the English legal system. When a contract is placed into that category the contract is treated as one in which the terms and conditions must be followed by the contract parties on a good faith basis. Good faith duties are frequently expressly incorporated into contracts e.g. in clauses dealing with payment disputes but in relational contracts there is no need to have a specific reference. The courts will imply a good faith overlay to the relationship between the parties.

So, what could make a contract be regarded as "relational"? The courts have provided some valuable guidance and the following principles can be taken into account:

- The contract does not expressly exclude the possibility of it having relational status.
- The contract is anticipated to last for a significant period of time.
- An intention can be inferred that integrity and fidelity will be important duties to be satisfied by the parties.
- There are elements of collaboration in the relationship.
- The overall objectives of the relationship are not necessarily entirely captured in the contract terms and conditions.
- Whilst there is no specific fiduciary relationship between the parties there is none the less an importance placed upon each party trusting the other.
- A high degree of communication, cooperation and mutual trust and loyalty is expected within the relationship.
- There is for the party concerned a significant financial commitment or investment expected of that party.
- There may be an element of exclusivity about the relationship.

The implications of a contract being regarded as one to operate on a good faith basis can be significant – whilst one party may take a position in a dispute that it is what the contract actually says that prevails the courts – if applying relational status – could disagree and determine the dispute with consideration as to whether the claimant in the case, is looking to enforce a term of the contract when taking into account good faith it should not do so or should be enforcing on a different basis.

It has to be emphasised that this is very much still a developing rule of law and as can be seen from the criteria referenced above will require a very strong case to be advanced. Most commercial contracts will not fall into this category but considering for example agreements that could be regarded as a franchise in practice (where the other party follows rules and procedures laid down by contract) or where an individual is required to make a very significant investment in developing a business from scratch this will be an aspect to be given careful consideration.

The CMA has public cloud infrastructure services under a competition law review

If you have moved cloud providers, you may have found that to be a painful and expensive process. But now through a reference from Ofcom, the Competition and Markets Authority ("CMA") has taken up the case and will look at whether the market for cloud services is not as competitive as it should be.

The reference from Ofcom has been accepted by the CMA who will now carry out an independent market investigation to examine the market and consider whether there are competition concerns. If the CMA finds issues it can take action in various forms to improve the supply of these important services for UK customers.

Cloud services have become an essential part of how many digital services are delivered to UK enterprises and consumers. Ofcom has estimated that the market for cloud services in the UK was worth up to £7.5 billion in 2022.

In its market study, Ofcom identified a number of features in the supply of cloud services that make it more difficult for customers to switch and use multiple cloud suppliers.

The features which Ofcom is most concerned about are:

- Egress fees – charges that cloud customers must pay to move their data out of the cloud
- Discounts – which may incentivise customers to use only one cloud provider
- Technical barriers to switching – which may prevent customers from being able to switch between different clouds or use more than one provider.

The investigation will also look at the detail of licence terms adopted by cloud providers and it will potentially have new powers to intervene in the market as a result of the Digital Markets, Competition and Consumers Bill once that becomes law.

Chief Executive Officer of CMA Sarah Cardell summed up the importance of this part of our digital economy in the following words:

We welcome Ofcom's referral of public cloud infrastructure services to us for in-depth scrutiny. This is a £7.5bn market that underpins a whole host of online services – from social media to AI foundation models. Many businesses now completely rely on cloud services, making effective competition in this market essential.

The CMA has appointed independent panel members to an inquiry group, who will act as the decision makers on this investigation. The group has published an issues statement setting out the intended focus of the investigation. The statement can be reviewed here.

Dot.Gov

Our regular round up of developments in Parliament, government and across the wider public sector.

Government launch consultation towards an Advanced British Standard

Consultation was launched on the 14th December 2023 seeking views on what an Advanced British Standard might look like. This would be a new baccalaureate style qualification for 16-19 year olds, which increases teaching time, with a core focus on maths and English. These transformative reforms are expected to take 10 years to complete, with a white paper expected to follow in 2024. The consultation can be accessed here: A world-class education system: The Advanced British Standard consultation - Department for Education - Citizen Space and closes on the 20th March 2024.

Greater protections will be put in place to protect children's education from strike action

On the 28th November the government launched a consultation to introduce new protections for children whose education might be affected by strike action. Minimum service levels will help to ensure children don't miss out on any vital learning, a move which has already been taken in countries such as France, Italy and Spain. The consultation can be accessed here: Minimum service levels (MSLs) in education - GOV.UK (www.gov.uk).

Education secretary Gillian Keegan said: Last year's school strikes were some of the most disruptive on record for children and parents with 25 million cumulative days lost, alongside the strike action that badly affected students in colleges and universities.

Greater protections for children from future strike action - GOV.UK (www.gov.uk)

New Early years foundation statutory framework

Active from the 4th January, 2 new Early years foundation statutory framework (EYFS framework) have replaced the current framework that was in place. The 2 new frameworks include:

- EYFS framework for childminders, which can be accessed here: EYFS statutory framework for childminders (publishing.service.gov.uk)

- EYFS framework for group and school-based providers, which can be accessed here: EYFS statutory framework for group and school based providers (publishing.service.gov.uk)

They set the standards to ensure children are kept healthy and safe, as well as supporting their development.

Early years foundation stage (EYFS) statutory framework - GOV.UK (www.gov.uk)

Government seeks views on the Elective Home Education guidance

The government sought views on proposed changes to the non-statutory elective home education guidance for local authorities and parents. This consultation closed on the 18th January 2024. The guidance is due for an update, having last been updated in 2019, and the aim is to help parents and local authorities to better understand what they need to do to ensure children receive a suitable education. Elective Home Education guidance review - Department for Education - Citizen Space

Dot.Gov

Public Accounts Committee weighs in on the Procurement Act 2023

Towards the end of 2023 Parliament, passed into law public procurement law reforms – taking advantage of the opportunity given by Brexit to establish a procurement regime fit for the United Kingdom's future.

Now, however the Public Accounts Committee has raised concerns in newly published report. An important consideration for that committee is understanding the extent of procurement actitivty and in connection with that the lack of meaningful data. This is particularly the case in relation to the work of Crown Commercial Services – responsible for multiple public sector frameworks many permitting direct awards without further competition between framework participants. CCS does not appear to be monitoring activity of this kind resulting in no meaningful statistical evidence.

The committee recommends that Cabinet Office should provide guidance on the use of framework agreements and expectations relating to the collection of data associated with their use.

The Committee is also concerned about the likely costs for the public sector of transitioning to the methodologies and legal principles that sit within the Procurement Act 2023. Cabinet Office is yet to provide a plan for the level of investment required or, indeed, a timeline calculated to ensure that individuals within public authorities are well organised and equipped to carry out procurements under the new regime.

The Committee report can be found here.

ICO issues warning relating to user options in relation to Cookie acceptance/rejection

On 21 November the Information Commissioner issued warning letters to some of the UK's top websites making clear that they face enforcement action if they do not make changes to comply with data protection law in the area of deployment of cookies and similar tracking tools.

Some websites do not give users fair choices over whether or not to be tracked for personalised advertising. The ICO has previously issued clear guidance that organisations must make it as easy for users to "Reject All" advertising cookies as it is to "Accept All". Websites can still display adverts when users reject all tracking, but must not tailor these to the person browsing.

ICO explains that it has written to companies running many of the UK's most visited websites setting out the concerns and giving them 30 days to ensure their websites comply with the law.

A look ahead to the next Commercial Education Brief

In the Spring edition, due to be published in April we will continue our series of planned articles explaining aspects of new legislation coming onto the statute books which could affect your business. Commercial Associate, Josh Day is majoring on the Digital Markets, Competition and Consumers Bill and will be taking a look at a further area of importance to digital businesses. Whilst the Online Harms Act is less likely to present major challenges for the sector, we will cover its intended scope and what to watch out for if your business could fall within regulation. In addition, we will provide our usual commentaries on data protection and in the Dot.Gov column coverage of developments in Parliament, government and other agencies that we want you to know about.

If there are particular topics you would like us to cover in future editions please do get in touch with Hollie Bryan

Awards and accreditations

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