

# Know Your Rights: a Decision to Suspend or Terminate a Contract (CLS Support Contracting Email Bulletin no. 70)

## 1 Introduction

- 1.1 This is the final bulletin in a four-part series focussing on the main remedial actions the Legal Services Commission (LSC) might take against your organisation if it is underperforming against contract.
- 1.2 This particular bulletin covers a decision by the LSC to suspend or terminate your contract and will explain what appeal rights you have should the LSC propose to take such action against you.
- 1.3 All bulletins in this series are amended excerpts from the forthcoming CLS Support Contracting Briefing no. 10, "*Performance against Contract: the rules and your rights*", which has been agreed for accuracy by the LSC. The briefing also covers many other subjects linked to performance against contract eg how to prepare an action plan, when you might be required to pay money back and what allowances for underperformance might be available to you.
- 1.4 This bulletin is applicable to Not-for-Profit (NfP) contract holders only. References in the form eg "C7(1)" are to the relevant sections within Annex C of the NfP Contract specification, "Organisational and Performance Requirements".

## 2 A decision to suspend or terminate a contract

- 2.1 A contract may be suspended in any situation where the LSC has the right to terminate the contract as an alternative to terminating the contract (see Standard Terms 20 and 21, "How the Contract can be ended" and "Consequences of termination", respectively).
- 2.2 The LSC states within Standard Terms 20(11) that the effects of suspension "shall be less serious than termination". The reason for this is that if a contract had been terminated then you would not be able to apply for a new contract until the expiry of a minimum period and would also then have to go through the whole application process again should you wish to contract further with the LSC. A suspension, on the other hand, can be lifted immediately.
- 2.3 If the LSC decides to suspend your contract due to underperformance it will issue you with a notice setting out the terms of the suspension, with reasons, at least 28 days before their decision would be implemented. If you object to this you would usually begin by applying for Internal Review and then, if appropriate, Review to the Contract Review Body, as described in the previous bulletins in this series.
- 2.4 If the LSC decides to terminate your contract due to your organisation's underperformance then they will issue you with a "notice of intended

termination" setting out the steps they propose to take and when, with reasons, at least 28 days before the termination will take effect (Standard Terms 20(8)). If you objected to this then you would again usually begin by applying for Internal Review and then, if appropriate, Review to the Contract Review Body.

### **Will sanctions be applied immediately?**

- 2.5 Unless your LSC Regional Office felt that there was a clear risk to clients or to public funds then they would suspend implementing any proposed action until the outcome of the appeals process should you decide to enter it (Standard Terms 23(4)).
- 2.6 However, if the LSC propose that the suspension or termination should go ahead without waiting for the outcome of the Internal Review, and you are aware of this, then you can choose not to apply for Internal Review and instead apply directly for Review to the Contract Review Body. On the other hand, if you were not aware of this and you had applied for Internal Review, then given the relative seriousness of the situation your Regional Director would treat it as an application for Review to the Contract Review Body anyway and refer your application directly to them rather than take it through the Internal Review process.

### **Responding to a notice of intended termination in writing before (or as an alternative to) entering the formal appeals process**

- 2.7 In these circumstances, and before you might decide to enter the formal appeals process, the contract allows you to respond, in writing, to the notice of intended termination and set out your views on their proposed action, providing your response is made before the date on which the termination comes into effect.
- 2.8 Please note that although the contract does not say that this option is available if the proposed action were to suspend your contract, there is still nothing to stop you availing yourself of it if you felt it appropriate – an LSC Regional Director would consider any comments or argument you might wish to make regarding your contract with the LSC at any time. The guidance in the following paragraphs on termination may then also be seen to apply to suspension of contract.
- 2.9 If you object to the intended termination then it is advisable for you to do this at an early stage, not least because it may avoid the time and effort involved in the formal appeals process.
- 2.10 However, if you intend to appeal the decision to terminate your contract should you not get a satisfactory response to your letter, then unless the LSC confirms in writing that it will also accept this letter as an application for Internal Review, you should accept the clock is still ticking in terms of the relevant stages of the appeals process.
- 2.11 Assuming you send this letter, your LSC Regional Office will then, within fourteen days of receiving it, either confirm or withdraw the date of termination or specify a further date for termination.

2.12 You should include in the letter:

- your views on the proposed termination, including
- your objections to the action the LSC proposes to take, and
- an explanation of your reasoning, and
- any alternative proposals you might want to make (which might include remedial action you would be prepared to take).

2.13 If you think you might enter the formal appeals process should the LSC not agree with your proposals, consider also including the following when drafting the letter:

- a notification to the LSC that you intend to proceed with the formal appeals process if you do not get a satisfactory response from the letter, and
- that you would like the LSC to consider the letter as an application for Internal Review if it is unable to agree with what you propose, and
- if the LSC still intends to terminate your contract, whether they would suspend the termination pending the outcome of any such appeal application(s) – because if not, you would be able to expedite matters and proceed straight to the Review to the Contract Review Body stage rather than go through the initial Internal Review stage (see 2.6).

2.14 If the LSC did agree to suspend the termination pending your formal appeal, then you should begin by applying for Internal Review (unless the LSC has already told you it will accept the letter as an application for Internal Review) and then, if appropriate and necessary, Review to the Contract Review Body as described in the previous bulletins in this series.

### **3 Review to the Contract Review Body**

3.1 The LSC explanation of the Review stage is at Standard Terms 23(10) to 23(15). Please bear in mind that the Review hearing itself will take place in London.

3.2 Please see the previous bulletin and the forthcoming briefing for a description of the Review to the Contract Review Body process and tips on how to succeed at appeal.

### **4 Further support and guidance**

4.1 We hope you found this series useful and would encourage you to explore these issues in more detail in the forthcoming briefing should you feel it necessary.

4.2 If you need guidance on any of the issues covered in this email bulletin, please contact the CLS Support consultancy service on **0870 7700 447 Monday – Friday, 1pm - 4pm** or email [cls.support@asauk.org.uk](mailto:cls.support@asauk.org.uk) at any time.