



The small print for BIG IDEAS

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Client Reference Number: [Confidential]

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Privileged & Confidential

By email to: [Confidential]

Dear [Confidential]

Re: Your appointment with qLegal on 26 January 2022.

How we work

Thank you for attending your appointment with us and for using the services of qLegal at Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors or patent attorneys, our advice is free, and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the Laws of England and Wales only. If you require advice outside of this jurisdiction, please contact us.

Summary of the facts and documents you have provided

Summary of background facts:

- [Confidential] (the 'Business') was established a year ago by [Confidential] to provide [Confidential] courses its students. The mission of the Business is to help people find an exciting and interactive way of [Confidential]. These classes are currently held online on MS Teams, and the Business wishes to continue the same. The payment for the courses is done through PayPal business account or bank transfer.
- The Business developed one course at the beginning, but has since expanded to providing five separate courses, with a sixth in development.

The Business' planned expansion:

- Due to increased demand and the time constraints this presents upon [Confidential] and [Confidential], the Business is looking to expand its workforce with initially two teachers over the next few months.
- The Business is looking to build long term stable relations with teachers who join its workforce.

- The expansion aims to provide positions of approximately four to six hours for the new teaching positions, but flexibility will be needed due to the growing nature of the Business.
- The Business wishes to limit the administrative workload from expanding its workforce.
- The Business, in expanding its workforce, seeks to ensure that it retains sufficient control over new and existing members of staff in order to retain its current standards and pedagogical style. This will be partly achieved through providing new hires with sufficient training to fulfil their workplace duties.
- The Business seeks to protect any Intellectual Property ('IP'), or knowledge gained through the Business from being exploited and used to compete or establish a rival service.

We have been provided with the following documents:

- qLegal Advice Letter dated 16.12.21 relating to corporate structure.

Scope of our advice

Our advice details recommendations on the ways in which to structure the expansion of the Business's workforce, accompanied with reasoned explanations as to why such a structure should be used. The advice further provides information on the relevant clauses which may be included to protect the Business's interests.

Summary of advice

Having understood your commercial needs, intentions, and future goals we recommend that a contract for services should be utilised when expanding the workforce. This structure is the most advantageous to the Business because:

- It ensures a sufficient degree of flexibility for the Business's planned development and workforce expansion.
- Further, it ensures the protection of the Business's IP rights (once obtained) if the correct clauses are placed within the contract of services.

However, we have also outlined the pros and cons of a contract of employment. This structure offers increased permanency, but significantly increases the administrative workload by creating additional statutory responsibilities for the Business.

Explanation

What are the options available to the Business?

The Business, in seeking to expand its workforce, has two main options regarding how to structure its future relationship between itself and its workforce, a contract of employment ('CoE'), and a contract for services ('CoS'). Both structures present viable options for the future expansion of the Business's workforce.

Option 1: Contract of Employment

I. What are the basic features of a contract of employment?

A CoE is a document which states the rights, obligations, and duties between an individual and an employer, which seeks to give the individual the status of an employee. A CoE is suitable for businesses that are looking for a more permanent option and wish to retain full control over employees when expanding its workforce. Employees, whose duties are governed by a CoE, are legally entitled to several statutory employment rights. Such rights include:

- National minimum wage,
- Protection against unlawful deductions of their wages,
- Protection against unlawful discrimination,
- Protection for reporting wrongdoing in the workplace (whistleblowing),
- Minimum notice period if employment is to be terminated,
- Protection against unfair dismissal,
- Request of flexible working,
- Statutory sick pay,
- Statutory maternity, paternity, adoption, and shared parental leave and pay,
- Statutory minimum length of rest breaks,
- Statutory holiday pay, and
- Statutory redundancy pay.

For further information regarding statutory employment rights see: [Employment status: Employee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/employment)

Utilising a CoE to expand the Business's workforce will present many key issues that must be weighed upon its current and future performance and aspirations. Below is a summary of the potential advantages and disadvantages of a CoE:

What are the advantages of a CoE?

- **Control:** By expanding the Business's workforce under a CoE, it will be able to implement, alter, adapt, and enforce workplace practices and measures in line with the current and future needs. This will ensure that teaching is carried out in the manner and to the standard that is desired, resulting in consistent operating practices.
- **Protection of the rights of the Business:** As represented by the sample contract in Section 1 of the annex, a CoE enables the Business to put measures in place which restrict the employee from disclosing any knowledge they have about the Business that was gained through their employment.
- **Mutuality of obligations:** A CoE creates mutual obligations between the Business and the employee to engage in the tasks and duties as specified under the CoE. This establishes minimum obligations

which both the Business and the employee must meet, resulting in consistency and predictability of the Business's operations.

- **Relationship:** The potential permanence of a CoE enables for the establishment of strong business-employee connections.

What are the disadvantages of a CoE?

- **Increased administrative workload:** Following our meeting, we understand that the Business has a finite amount of time regarding its administrative workload. Under a CoE, there is an increased administration load due to obligations such as PAYE. For further information, see: [Employment status: Employee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/employment-status-employee). As such this may not represent the most efficient way to structure the expansion of the Business's workforce at this stage.
- **Lack of flexibility:** Flexibility of working hours may represent an issue due to the requirement to provide the minimum contracted hours and the obligation to pay for such contracted hours, even if they are not provided. A zero-hour contract may resolve this issue but would sacrifice the enforceability of an exclusivity clause.
- **Practical boundary to downsizing:** Due to the more permanent nature of a CoE and the statutory rights afforded to employees, this may present practical boundaries if the Business wants to restructure.
- **Unlimited liability (if operating as a sole trader):** As per our previous advice dependent on whether the Business is structured as a Sole Trader, [Confidential] would be personally liable for the Business's obligations. With respect to CoE and the Business's statutory duties towards employees, [Confidential] would become personally liable for payroll obligations and actions of employees.

II. Key clauses to include in a CoE

A CoE must include a written statement of the employment particulars. This statement must cover key areas governing the employment relationship (see: [Employment Rights Act 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1996/18)), please see the areas which must be covered and their responding sample clauses in Section 1 of the adjoined annex.

Moreover, a business's structure does not alter this requirement. A Sole Trader is also required to register as an 'Employer' in order to utilise CoE for workforce expansion and is therefore subject to the same rules and performance requirements. For further information please see: [Register as an employer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/register-as-an-employer)

III. Summary

Expanding the workforce via CoE has many advantages for the Business. However, a CoE presents a significant increase in the Business's administration workload, due to obligations such as PAYE. Following our meeting, we are aware that this may not be suitable for the Business, as this will be restrictive upon its ability to expand, create and develop its line of courses.

Although, if the Business continues to grow the restrictive nature of the increased administrative workload presented by a CoE would diminish and become more advantageous due to the strong relationship it creates between the employer and employee. As such, a CoE may represent the more advantageous option dependent upon the future position of the Business.

Option 2: Contract for Services (Hiring Independent Contractors)

I. What are the basic features of a contract for services?

Another option for the Business to expand its workforce is arranging the relationship through a CoS, such as hiring an Independent Contractor ('IC'). An IC is a self-employed individual who is appointed, either short-term or long-term, to undertake specific tasks required by a business. This type of arrangement does not normally afford the individual 'employee' status, therefore not entitling them to the same statutory rights that are given to an employee under a CoE. Typically, an IC:

- Provides a service in exchange for compensation,
- Works for a term required to perform a specific task,
- Has control over the method of work,
- Is economically independent,
- Is responsible for their own taxes, and
- Does not benefit from the protections afforded to an employee, such as sick pay and holidays.

An IC is particularly suitable for businesses that wish to reduce overheads and reduce administrative workloads.

What are the advantages of a CoS?

- **Flexibility:** In an IC arrangement, the Business is hiring suitable individuals for a specific task required for the successful running of the Business, meaning that you can specify the type, duration, and scope of work required to be completed by the IC. This would enable you to retain a sufficient degree of control over the decision-making authority. Moreover, through structuring the expansion on a CoS, allows for increased flexibility if the Business needs to restructure.
- **Limited paperwork:** We understand that the Business wishes to minimise its administrative workload. Since an IC is responsible for their own payment and tax contributions, this means the Business would not be burdened with extensive paperwork which would otherwise be required under a CoE.

- **Specialist skills:** This type of arrangement is effective regarding work that requires a high degree of expertise or knowledge or is specialised in nature. As such, due to the specialised nature of the Business's operations this enables it to maintain high internal standards, regarding course content and delivery, strengthening the Business's competitive edge.
- **No long-term commitment:** When hiring an IC, there is no obligation to commit to these individuals long-term. We understand that it was a possibility for the Business to consider short-term arrangements when expanding its workforce initially, and then move towards a more permanent structure in the future. A CoE therefore enables the Business to assess an individual's performance and abilities, before potentially restructuring the relationship into a CoE.
- **Efficiency:** Due to the reduced formalities and administrative workload required of a CoS, this makes it an efficient way of expanding a business's workforce.
- **The supply of equipment:** The Business is not required to supply the individuals with company equipment, representing reduced initial outlays when expanding its workforce.

What are the disadvantages of a CoS?

- **Lack of control:** Opting for this type of arrangement may mean giving up some control over how tasks are completed. We understand that the intention is to train new teachers to ensure that they teach in the pedagogical style preferred by the Business. However, to maintain an IC status, a degree of freedom must be afforded to these individuals as to how they wish to perform their duties. This may have a potential impact on the consistency of customer experiences, and upon brand reputation.
- **Substitutability:** An IC typically has an unqualified right to delegate their work to another individual who is specialised in this area. However, a clause may be inserted into the CoS to limit this right. The inclusion of such a clause will help the Business retain control over any substitutes put forth by the IC. Although, if worded too restrictively, this may constitute a change in employment status.
- **Lack of continuity:** Due to the nature of a CoS being for a particular duration or project, workforce retention may be reduced.
- **Reduced sense of company identity:** Under this arrangement, the IC may not regard themselves as a representative of the Business because of their independent nature.
- **Potential lack of IP protection:** It is crucial to insert a clause for the protection of the Business's IP rights, such as a Non-Disclosure Agreement ('NDA').

It is imperative to note that even where self-employed individuals are appointed under a CoS, there is a risk that the agreement may be deemed one of employment if the working arrangement in practice does not reflect the written agreement. To safeguard against this, the degree of control, such as equipment and working hours, must fall under the control of that individual who is being hired by the Business.

II. Key clauses to include in a CoS

A CoS typically includes these clauses:

- IC's obligations,
- Duration of the agreement,
- Remuneration and expenses,
- Confidentiality,
- Relationship between the parties, and
- Termination.

Please see a sample CoS contract in the adjoined Annex. For further information regarding the standard terms and conditions of a CoS, see: <https://www.gov.uk/government/publications/standard-terms-and-conditions-of-contract-for-services>

Summary Points

A comparison of CoE and a CoS:

Key Points	CoE	CoS
Control over Business Practices and Methodology	Yes	Limited
Efficiency	No	Yes
Flexibility when Restructuring	Limited	Yes
Limited Administrative/Paperwork Duties	No	Yes
Close, Permanent Working Relationship	Yes	Limited
Intellectual Property Protection	Yes	Yes

We advise that hiring an IC will provide the Business with the flexibility, efficiency and choice that is desired. In terms of protection of IP rights, the inclusion of a one-way NDA will protect the Business from any misuse of these rights by the IC. Similarly, because the Business wishes to gain some element of control over substitutes provided by the IC, the correct substitution clause will allow for this, whilst preventing the agreement turning into a CoE.

Overall, hiring an IC for a CoS provides the best solution for the Business. Nevertheless, it is imperative to keep this under review regularly, in case the relationships evolve over time.

To know more about the different kinds of employment status, see: <https://www.gov.uk/employment-status/selfemployed-contractor>

Next Steps

- We advise that the Business expands its workforce through using a CoS.
- While we advise that the Business should utilise a CoS in its current expansion, we further recommend keeping this under regular review because if the Business continues to grow, a CoE may become more advantageous.
- Finally, we advise the Business to seek further advice upon the drafting and detailed nature of either a CoS or a CoE when seeking to enter into any such arrangement.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact us.

We would be extremely grateful if you could take a few moments to complete this short form <https://qmul.onlinesurveys.ac.uk/client-feedback-on-qLegal-2021-22>, as your feedback is important to our educational development and the development of our services.

Yours sincerely,

[Confidential]
Student Adviser

[Confidential]
Student Adviser

On behalf of qLegal