

## Contracts - inc Tax, VAT - WYCAS

### Grants and contracts

When is a grant not a grant? That's right, when it's a contract. Or is it a Service Level Agreement? Whatever it is, it is important for us as governing bodies of organisations to understand the nature of our income as it can have an effect on our reserves and our potential liabilities.

Bear in mind that the law covering the following issues can be quite complex so this is by no means the be all and end all but merely the main points.

I'll set out 2 different scenarios:

### Scenario 1 - Grants

Within our organisation, we decide that we want to run a series of play schemes over the summer months.

Unfortunately, we have no money to do this with, and our users would not be able to pay enough to cover all the costs.

However we are aware that there is a funding body that has money for furthering creative play in our area.

We decide to write an application asking for some money for our activity.

They reply by saying yes but stating that the money must be spent on the activities stated and they would like a report and some photos at the end.

### What has just happened there?

Well for starters, it was us that was defining what it was that we were going to do, not the funder. The funder had the discretion as to whether to give us any money, they could have said no. Their money is connected to their objects and it was only because our activity fitted in with their objects that they decided to give us any money. Though even then they could still say no!

When they agree, they are creating a relationship of 'trust' - this means that the money can only be used for the purpose for which it had been asked. If that purpose is narrower than your organisation's objects then, to you, that money is 'restricted' if not then it will be 'unrestricted' since your organisation can't do anything outside its objects. However a grant might also be restricted, not to a purpose, but to a certain type of expense e.g. salaries or equipment. In other words it's not necessarily simple to work out whether a grant or donation is restricted.

Lastly, in asking for a report, they are asking you to prove that the money has been spent in the way intended.

This concept follows for all grants and donations - they are given voluntarily and the donor gets no benefit in return. They are not buying the service from you.

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### Scenario 2 - Contracts

Our local authority wants to deliver a range of services to older people in our area. It is not going to do this 'in house' with its own staff; instead it is going to pay someone else to deliver the services. It invites 'tenders' from groups who think they can do the work and gives them a full service specification to help the groups cost up the work.

We examine what is required, we think we can do it, so we cost up the work and we come up with a price. We submit this to the council and they reply, saying that they will offer slightly less! We accept this offer, sign the agreement and return it. Finally, they sign it and we end up with signed copies.

### So how is that different?

Here, it is the council (the buyer) setting out exactly what they want (they had a specification). By working out a price we are saying that we are willing to exchange this amount of money for that amount of work.

The relationship created here is one based on exchange - money in return for a service. What you actually spend the money on is up to you, so long as you deliver what was specified in the contract. i.e. if you make a genuine profit, it's yours to keep - well done!

It is exactly the same as hiring a builder to come and fit a kitchen for you. You tell them what you want, they cost it up and give you an estimate. You offer them that amount, they agree and the work proceeds.

It would also be the same if we charged people an amount of money for our services - e.g. we charge £5 for shopping trips, or £320 for a day's training, or £2 per preschool club session or indeed when you buy a Mars bar from the shop! The key difference however is that in a contract both parties intend to be legally bound. You pay the money to get the service.

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### Okay so what happens when things go wrong?

With a grant, lets say we get a grant to cover the costs of a playscheme and we use it to take the committee to Scarborough for the week.

This would be called a 'breach of trust' and then we would need to repay the funds to the funder to restore them back to the position they were in before they gave us the money.

They might allow us more time to deliver the playscheme using our own money to the same value.

With a contract it's not so much about how we spend the money, it's about both parties doing what they agreed to do.

In our example, we agreed to deliver the services as per the specification in the contract. If we do all of that to the letter, then the other party (the council) must pay us the full amount as agreed in the contract.

If we fail to deliver the services that are at the heart of the contract, then this would be called a 'breach of contract'. It effectively terminates the contract and the injured party would escape liability ie would not have to pay up. Furthermore they might be able to sue for certain damages or losses that they suffered as a consequence of our breach. For example, they might have to re-tender the work at some cost. They would most probably sue us for this as it only arose because of our breach in the first place.

However not every breach gives this outcome, a breach of a less fundamental term might not bring the contract to an end, but would give the injured party the right to sue for damages but they would still need to keep up their half of the bargain.

Some would say that in contract you have to do whatever you sign up to. This isn't strictly the case; some terms in contracts could be deemed 'unfair'. Contracts are meant to be constructed in 'good faith' so that there is no significant imbalance between the parties. If you agree to do the work and don't charge enough - that's just hard luck and you'll know better next time (unless you'd been misled). However if the other party writes in a disproportionate penalty clause for failure to deliver, this might turn out to be unfair.

In contract the injured party's losses are claimed for, i.e. you try to restore them to where they were before being injured.

In summary, in a breach of trust, we are liable for the amount of the grant misused (and any profits we make from its misuse), whereas in breach of contract we are liable for all the damages which flowed from that breach - in this way our liabilities might actually exceed the actual value of the contract itself.

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### Service Level agreements

Are you getting the idea now? So what about Service Level Agreements (SLAs)? Well, is the other party getting something they want in return? For example a service delivered to a specific standard in a given time for an agreed amount. In other words, is exchanging a service for money at the heart of the agreement? (i.e. a contract, so both parties intend to be legally bound).

Or have you merely asked them for money to do something you want to do but can't afford to? In other words, do you want them to donate some money so you can do what you want? (i.e. a grant or donation).

I'm sure you will agree making this distinction can be quite tricky in practice. It may even only get sorted out when someone has to make a decision for a particular reason, say, HM Revenue and Customs!

Other issues to consider (VAT and corporation tax)

VAT registration is a potentially complicated issue for groups in our sector as there is often a mixture of different types of income. If your income in the form of charges for services / work done / sales (excluding grants and donations) gets close to the VAT registration threshold (£61k for 2006 / 07) in any 12 month period, then you need to seek expert advice as you might have to register with HM Revenue and Customs.

For certain types of trading activity, for certain types of organisations there may also be some corporation tax to pay on any net profits made on that activity (current rate starting rate: 19% for Apr 06 to Mar 07). Again, this is too complex for this article. If you have your accounts prepared by an accountant then they should point out if any tax liability has arisen.

This information was prepared for fit4funding by the West Yorkshire Community Accounting Service (WYCAS).