

COSCSMO17 SQA Unit Code H9A2 04

Evaluate and progress the resolution of contractual disputes in construction management



Overview

This unit is about having the experience and ability to assess the background and basis of a contractual dispute. In this process, you will need to identify the strengths and weaknesses of the case being made.

You will need to assess and evaluate the documentation and supporting evidence in a logical and methodical manner which can be recorded and interpreted by others.

You will need to assess your own limitations and recommend, as necessary the support and guidance from legal advisors. You will need to identify and quantify the potential outcomes and risks in both the long and short term. You should be familiar with the various options available and be able to make a considered judgement on the correct course of action, taking all contingencies into account.

You will need to be able to supervise the preparation of the necessary submission documentation in a clear and concise manner with no ambiguities or anomalies. In doing this you should check the robustness of the arguments being tabled to check if they will stand up to scrutiny.

You will need to be able to produce contractual binding correspondence and keep all relevant parties advised of the progress and outcome on the dispute.

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Performance criteria

You must be able to:

Evaluate potential implications for the resolution of disputes

- P1 evaluate all the **information which is relevant to the dispute**, identify **information** which will support the case and summarise and justify it in a reasoned argument
- P2 assess the strengths and weaknesses of the case and make a judgement about the potential outcomes
- P3 identify what **expertise and support** will be needed at different stages of the **dispute**
- P4 consult with experts, and provide them with a clear, valid and accurate summary, in cases where expert interpretation and judgement is required
- P5 assess the arguments and the advice received from experts, produce justifiable conclusions and recommendations for further action and pass these to the parties involved in the **dispute**
- P6 assess the implications of proceeding with the case
- P7 identify potential **options for settling the dispute** which are based on relevant information and accurate assessments
- P8 identify potential responses to the **options for settling the dispute** and assess the risk involved
- P9 recommend a **process for settling the dispute** which is likely to be most acceptable to all the parties involved and which meets legal requirements
- P10 specify, clearly, the **process for settling the dispute** which has been agreed and prepare written terms and conditions

Negotiate and progress the resolution of disputes

You must be able to:

- P11 prepare documents about the **dispute** which have a clear rationale, and which include valid supporting information
- P12 keep regular contact with the parties involved in the **dispute** and investigate and propose **options and processes for settling the dispute**, which are likely to be acceptable to them
- P13 review **reactions and proposals** from opposite parties and recommend a **response**
- P14 ask questions to test the consistency and resilience of the opposite parties' position and to probe for possible movement
- P15 summarise and record points of agreement and disagreement
- P16 recommend acceptance of offers which are judged to be the best available
- P17 draft formal acceptance letters accurately and in a suitable style, and send them promptly to all parties
- P18 suggest realistic **options and processes for settling the dispute** when

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offers are not acceptable and assess the advantages and disadvantages of each alternative

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Knowledge and understanding

You need to know and understand:

Evaluate potential implications for the resolution of disputes

- K1 how and why to evaluate all the **information which is relevant to the dispute** (evaluation)
- K2 what to identify as **information** which will support the case (understanding)
- K3 how to summarise **information** which will support the case (application)
- K4 how and why to justify **information** which will support the case in a reasoned argument (evaluation)
- K5 how and why to assess the strengths and weaknesses of the case and make a judgement about the potential outcomes (analysis)
- K6 what to identify as the **expertise and support** which will be needed at different stages of the **dispute** (understanding)
- K7 how to consult with experts in cases where expert interpretation and judgement is required (application)
- K8 how and why to provide experts with a clear, valid and accurate summary (synthesis)
- K9 how and why to assess the arguments and the advice received from experts (analysis)
- K10 how to produce justifiable conclusions and recommendations for further action (application)
- K11 how to pass justifiable conclusions and recommendations to the parties involved in the **dispute** (application)
- K12 how and why to assess the implications of proceeding with the case (analysis)
- K13 what to identify as potential **options for settling the dispute** which are based on relevant information and accurate assessments (understanding)
- K14 what to identify as potential responses to the **options for settling the dispute** (understanding)
- K15 how and why to assess the risk involved in the potential responses to the **options for settling the dispute** (analysis)
- K16 how and why to recommend a **process for settling the dispute** which is likely to be most acceptable to all the parties involved and which meets legal requirements (synthesis)
- K17 how and why to specify, clearly, the **process for settling the dispute**

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which has been agreed (synthesis)

K18 how to prepare written terms and conditions for settling the dispute (application)

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You need to know and understand:

K19 how to prepare documents about the **dispute** which have a clear rationale, and which include valid supporting information (application)

K20 how to keep regular contact with the parties involved in the **dispute** (application)

K21 how and why to investigate **options and processes for settling the dispute**, which are likely to be acceptable to the parties involved in the **dispute** (analysis)

K22 how and why to propose **options and processes for settling the dispute**, which are likely to be acceptable to the parties involved in the **dispute** (synthesis)

K23 how and why to review **reactions and proposals** from opposite parties (analysis)

K24 how and why to recommend a **response** to opposite parties (synthesis)

K25 how to ask questions to test the consistency and resilience of the opposite parties' position (application)

K26 how and why to probe for possible movement in the opposite parties' position (analysis)

K27 how to summarise and record points of agreement and disagreement (application)

K28 how and why to recommend acceptance of offers which are judged to be the best available (synthesis)

K29 how and why to draft formal acceptance letters accurately and in a suitable style, and send them promptly to all parties (synthesis)

K30 how and why to suggest realistic **options and processes for settling the dispute** when offers are not acceptable (synthesis)

K31 how and why to assess the advantages and disadvantages of each of the alternative **options and processes for settling the dispute** (analysis)

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Scope/range

Evaluate potential implications for the resolution of disputes

- 1 Dispute - types:
 - 1.1 land
 - 1.2 property
 - 1.3 construction
 - 1.4 contracts
 - 1.5 agreements
 - 1.6 third party claims
- 2 Information which is relevant to the dispute:
 - 2.1 contract documents
 - 2.2 correspondence
 - 2.3 instructions
 - 2.4 contract records
 - 2.5 technical reports
 - 2.6 witness testimony
 - 2.7 other evidential material
 - 2.8 expert opinion
- 3 Expertise and support in:
 - 3.1 legal
 - 3.2 technical
 - 3.3 financial
- 4 Options and processes for settling the dispute:
 - 4.1 re-negotiation
 - 4.2 negotiations at higher levels of authority
 - 4.3 mediation, adjudication and arbitration
 - 4.4 formal dispute resolution
 - 4.5 legal action

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- 5 Dispute - types:

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- 5.1 land
- 5.2 property
- 5.3 construction
- 5.4 contracts
- 5.5 agreements
- 5.6 third party claims
- 6 Options and processes for settling the dispute:
 - 6.1 re-negotiation
 - 6.2 negotiations at higher levels of authority
 - 6.3 mediation, adjudication and arbitration
 - 6.4 formal dispute resolution
 - 6.5 legal action
- 7 Reactions and proposals:
 - 7.1 positive
 - 7.2 negative
- 8 Responses:
 - 8.1 accepting
 - 8.2 rejecting
 - 8.3 clarifying
 - 8.4 providing additional information

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