



# Entering into Contracts Policy

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## Document control table

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### Document History

Version	Date	Author	Note of revisions
V3	14.07.2021	J Wilby	Page 6 – Remove reference to contracts affecting more than one academy.
V3	14.07.2021	J Wilby	Page 6 – Authority to approve contracts over £100,000 amended to two Members and Two Governing Body Trustees to reflect the Scheme of Delegation
V3	14.07.2021	J Wilby	Page 7 – Authority delegated to CFO changed to Principal for Insurance Policies costing less than £3,000

## **Why this policy is important**

ENLUTC is a company and, as such, a legal entity in its own right. However, in order for the UTC to enter into contracts, its Trustees must act on its behalf under delegated authority. The UTC's Memorandum and Articles of Association (**Governing Document**) delegate the authority for UTC's management to the Trustees as a body. This includes the power to enter into contracts. Only the Trustees collectively can validly authorise the entry into a contract by the UTC, unless they have in turn delegated authority to a smaller group of Trustees or senior staff to enter into the type of contract in question.

Also, according to the Charity Commission's standards of good governance, a charity should have all major contracts authorised by a board resolution and the board should authorise two Trustees to sign the contract on behalf of the charity.

If a contract were entered into without being properly authorised, this could result in a 'bad' contract still being binding on the UTC. Alternatively, it could result in the UTC not being able to enforce a 'good' contract. In either event, if the UTC suffers loss as a result, the Trustees could be personally liable. Also, if the Charity Commission became aware that contracts had been entered into without proper authorisation, it may choose to investigate.

This policy is intended to help the Trustees ensure that contracts are properly authorised and to protect them and UTC from liability.

## **Requirement to comply with this policy**

The Trustees are collectively responsible for the good administration of the UTC and it is expected that each Trustee will actively comply with this policy. Where a Trustee fails to comply with the policy, he or she will be required to explain this at the subsequent board meeting following discovery of this failure. The Trustee who has breached the policy will then absent himself or herself from the meeting and the other Trustees will then consider privately what action, if any, should then be taken.

Because senior members of staff will often be involved in the negotiation of contracts, the chairman of the Trustees should write to them enclosing a copy of this policy and requesting that they do all they can to ensure compliance. In particular, senior staff should ensure that the Trustees as a body are made aware of potentially significant contracts and that all contracts being entered into have been properly authorised. Such a letter should be sent to any new senior staff who are appointed.

## **The Primary Rule**

No contract can be entered into on behalf of the UTC unless (i) entry into the contract has been properly authorised; and (ii) persons able to sign that type of contract on behalf of the UTC have been identified and sign the contract.

(The above rule reflects the general position under company law, though authorised contracts may still be found to be binding on the UTC under the principles of agency law).

The rules which are set out below, each of which forms a part of this policy and must be followed, are intended to ensure compliance with this primary rule.

In the rules which follow:-

- a **Delegated Contract** refers to any contract in respect of which the Trustees have delegated their power to authorise entry into that type of contract to a smaller number of individuals; and
- a **Standard Contract** refers to any contract which is not a Delegated Contract, i.e. contracts which must still be authorised by a validly constituted meeting of the Trustees.

### **Reporting of potential contracts**

Where a Trustee or senior member of staff becomes aware of any proposal that a contract **of any type** is to be entered into on behalf of the UTC, this should be reported as soon as reasonably practicable to the Chief Financial Officer.

Where the contract is a **Standard Contract**, it should also be reported to all of the Trustees as soon as reasonable practical. Any work in relation to a potential Standard Contract should not be progressed beyond the proposal stage without informing all of the Trustees and obtaining their approval to proceed.

Where the contract is a **Delegated Contract**, it should be reported to those Trustees or senior staff who have been given delegated authority to approve entry into such contracts.

As noted above, a contract will be a **Delegated Contract** if it is of a type in respect of which the power to authorise has been delegated by the Trustees to a smaller number of Trustees or senior staff. This will only apply to a small number of contracts specifically described in the resolution(s) by which the Trustees delegated their authority. Legal advice should be sought if there is any doubt as to whether a contract is a Delegated Contract.

[The list of types of contract for which authority has currently been delegated is set out below:]

Over £100,000 – 2 Members and 2 Governors, Principal to make recommendation to the Board

£50,000 - £99,999 – Chair of Governors, Principal to make recommendation to the Board

£25,001 - £49,999 – Finance & Risk Committee (or representative), Principal to make recommendation to the Finance & Risk Committee

£10,000 - £25,000 – Finance & Risk Committee (or representative) and Principal

£5,001 - £9,999 – Principal

Any contracts not covered above and costing less than £5,001 – Principal.

### **Authorising the entering into of a particular contract**

Where contract negotiations are reaching a stage where the contract may soon be signed, then the following rules for authorising the contract should be followed. You should note that authorisation of the contract is not sufficient for the UTC to enter into the contract; it is also necessary to ensure that the contract is signed by persons who have authority to sign the contract on UTC's behalf (see below).

In the case of a **Standard Contract**, a meeting of the full body of Trustees should pass a resolution authorising entry into the contract in accordance with the procedures set out in UTC's Governing Document. (A further resolution must be passed authorising persons to sign the contract (see below)).

In the case of a **Delegated Contract**, a meeting of those with delegated authority to approve the contract should pass a resolution authorising entry into the contract in accordance with the terms of their delegated authority. (A standing resolution of the full body of Trustees will have authorised any two of those with delegated authority to sign the contract on UTC's behalf (see below)).

Once entering into a particular contract has been authorised, it is necessary to consider the separate matter of who is authorised to sign that contract on behalf of the UTC. Only persons with the proper authority to sign the particular type of contract on the UTC's behalf should sign the contract.

In the case of each **Standard Contract**, the Trustees should pass a separate resolution authorising any two of four named Trustees to sign that particular contract on the UTC's behalf.

In the case of a **Delegated Contract**, the full body of Trustees should have passed a standing resolution authorising any two of those having delegated authority to authorise the contract to sign the contract. Those involved with the contract should ensure, in respect of each Delegated Contract, that the standing resolution has been checked and that the proper persons have been identified to sign the contract.

If Trustees or senior staff are in any doubt in regard to whether a particular contract has been validly authorised or in regard to who can sign a particular contract, they should consult the Trust solicitors.

### **Reporting back by those with delegated authority**

Those Trustees or senior staff who have been delegated authority to authorise entry into certain types of contract shall report back to the Trustees in respect of any action taken or decision made with respect to their delegated powers at the immediately following meeting of the Trustees.

(The above rule reflects the requirements of clause 96 of UTC's Articles of Association.)

In addition, those Trustees or senior staff should also comply with any reporting requirements set out in the resolution by which they were delegated their authority.

### **Conflicts and trustee / senior staff benefits**

In a case where a trustee (or senior member of staff) has an interest in relation to a contract which UTC will enter and/or could receive a benefit under that contract, then this should be raised with the Accounting Officer.

In addition to complying with the above policies, Trustees and senior staff should ensure that no person who has a conflict of interest in relation to a particular contract is involved in managing or monitoring that contract.