



## BACKGROUND

When suppliers have financial difficulties, it can put a strain on both the supply chain and local authorities. As a result, local authorities must be prepared for the possibility of supplier insolvency and the severe impact it could have on their services. Because many local governments rely on private sector operators, procurement and commissioning teams must actively manage contracts and monitor suppliers for indicators of financial fragility. This article highlights red flags to watch out for, offers general guidance on contractual protection, and emphasises the importance of exploring alternative suppliers to safeguard vital public services.

Many of our clients including local authorities come to us when they are concerned about supplier performance and the possibility of supplier insolvency. It's at this point that they turn to their legal teams for advice and guidance to see what legal protection the contracts offer.

So, what general guidance can we offer?

## IDENTIFYING RED FLAGS

Local authorities should not rely solely on suppliers to disclose their financial positions. Instead, they should proactively monitor and look out for the following warning signs of supplier financial difficulty:

- Delayed payments to subcontractors
- Deteriorating performance levels
- Requests for early or advanced payment
- High turnover among employees or management
- Rumours circulating about the supplier's financial stability
- Failure to file accounts on time or County Court judgments against the supplier
- Unjustified claims against the local authority by the supplier



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## CONTRACTUAL PROTECTION

To protect themselves against supplier failure, local authorities can take two approaches: contract variation or improved contract enforcement.

### Contract Variation:

A thorough review of existing contracts with suppliers is crucial, regardless of the contract's value. Larger contracts often include detailed provisions that give early notice of potential problems, while shorter contracts may lack such commercial robustness. If warning signs arise, local authorities should be in a position to request a contract variation to enhance protection, maintain open lines of communication, and ensure timely information exchange. They can also seek guarantees from third parties to prevent service disruption.

### Contract Enforcement

Contracts may typically include provisions that safeguard the local authorities against supplier failure, such as:

- Key Performance Indicators (KPIs) that establish service standards
- Supplier obligation to notify the local authority of material changes in their financial circumstances
- Requirement for the supplier to provide financial records and regular management accounts
- Local authority's right to conduct audits on the supplier's premises
- Automatic default by the supplier in certain trigger events, like attempting to renegotiate with creditors

It is important to consistently enforce contract terms and promptly address any non-compliance, irrespective of the relationship with the supplier. Failure to enforce contract terms cannot be used as an excuse for future non-compliance.

## PREPARING FOR ALTERNATIVES

When supply chain issues arise, local authorities should be proactive in seeking alternative suppliers. Attending supplier market events, trade shows, and staying connected with the market will facilitate the identification of prospective alternatives. To preserve important public services from catastrophic failure, it may be necessary to use emergency tender procedures.

## CONCLUSION

By identifying red flags, exploring contract variations, enforcing contractual terms, and preparing for alternative suppliers, local authorities can protect themselves against supply chain disruption caused by supplier insolvency. Safeguarding vital public services is paramount, even in the face of challenging economic circumstances.

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## About Pathfinder Legal Services Ltd's Corporate Governance Team

Our team of specialist governance lawyers have significant experience of advising a number of local authorities and public sector organisations on governance issues. Some of our lawyers are appointed as Monitoring Officers or Deputy Monitoring Officers for a number of organisations including Police and Fire Authorities. Whether you are looking for one off advice on specific projects or issues, training for your members or ongoing governance support we would be able to assist you with your needs. Our governance lawyers also advise on:

- elections, petitions and local polls;
- standards investigations and advice to standards committee;
- member training
- amendments and drafting on the constitution
- change of organisation structures
- community governance reviews and their implementation;
- the use of wholly--owned local authority companies, charitable bodies and other project vehicles for specific purposes;
- advice on the Freedom of Information Act 2000, the Data Protection Act 1998, the Environmental Information Regulations 2004 and the General Data Protection Regulations;
- the impact of new legislation on decision making and council procedures.

## About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County, Central Bedfordshire, North Northamptonshire, and West Northamptonshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at [operations@pathfinderlegal.co.uk](mailto:operations@pathfinderlegal.co.uk)

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