

Contractual Risk for Recruiters, we don't need to worry ... or do we ?

Four good reasons why we should

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For over 20 years, I worked for multinational engineering companies involved in complex projects where the management of safety and risk was of paramount importance. This gave me a solid understanding of managing risk in regulated and safety critical industries. My subsequent 16+ years at the US\$2bn global recruiter NES Fircroft, as the Group Commercial & Legal Director, enabled me to hone my skills in managing risk in contractual negotiations with clients and suppliers. These negotiations required me to have an in-depth understanding of the obligations, liabilities and indemnities that clients set out in their contracts. Many are onerous (and often inappropriate for a recruitment business). I had to justify to clients why they needed to be better aligned to the business operating model of the professional recruitment sector. During my association with APSCo, I have had the privilege of serving for a total of 8 years on the UK Representative Committee during 2010 to 2022 and twice as the Chair in 2011-2012 and 2020-2022. My passion for managing risk and extensive experience enables me to help businesses in the professional recruitment sector to mitigate their risks and achieve compliance, so they can enhance shareholder value through the adoption of best practice.

To address the question as to whether it is necessary for recruiters to worry about contractual risk, it is first important to understand what is meant by 'contractual risk' in recruitment contracts. Whilst the contracts your business enters into allow you to take advantage of business opportunities and profitable business relationships, contractual risks are issues or problems that inherently arise during the performance of a contract. Such risks have the potential to harm your operations and result in either positive or negative outcomes of a contract. It is critical for recruitment businesses to manage and mitigate these risks to ensure the Risk vs Reward scales tip in your favour.

In this Blog, I will highlight some of the key risks that recruitment businesses face and explore four good reasons why we should mitigate such risks to minimise the potential for such risks to harm your business.

During my risk reviews of recruitment contracts, I have identified five key categories of risks that need to be carefully assessed and considered in contract negotiations:

Operational risk: loss caused by inadequate or failure to follow best practice recruitment processes, for example poor verification of CVs, education, professional qualifications and work experience of candidates.

Financial risk: loss of money, for example as a result of clients not paying invoices on-time or worse, not at all.

Legal risk: from breach of contract obligations or not meeting legal compliance requirements. Potentially the biggest contractual risk facing recruitment businesses arise from the consequences of accepting vicarious liability for the professional work and acts & omission of the contractor personnel / temporary workers we place (*this is a significant topic worthy of its own separate Blog in the future*).

Data risks: arising from inadequate management of personal data or non-compliance with data protection laws.

Brand risk: negative PR as a fallout from any of the above.

It is essential for your business to adequately manage these risks for the following **four good reasons**:

1. Negative impact on the profitability of your business

If the above risks are not adequately mitigated, there is a high probability they will lead to your business and/or your clients suffering financial loss and reputation damage, potentially leading to costly and time consuming litigation.

2. Not all losses are covered by insurance

If you have comprehensive insurance policies, then it is possible such financial losses to your business and/or your clients may be recoverable from your insurer. However all insurance policies have terms, conditions and exclusions which

means they may not respond or may not include coverage for certain losses, related for example, arising from vicarious liability. As a minimum, if you make an insurance claim you will need to pay the policy's deductible, which could be significant.

3. Missed opportunities for lower insurance premiums or enhanced coverage

If your business fails to adopt industry best practice in the negotiation of contracts to minimise the risk exposure for your business and your insurer, then you will not be able to demonstrate to your insurance underwriter that you have a robust contractual risk strategy. This will mean you will miss out on potential reductions in your insurance premiums, lower value policy deductibles and valuable opportunities for your insurance broker to negotiate enhanced scope of insurance coverage for you. More fundamentally, there is a possibility that if your approach to managing risk does not provide sufficient comfort to brokers and underwriters, they may not have an appetite to offer insurance and so coverage may not even be available to your business.

4. Lower valuation of your business

When you come to sell your business, a key component of a Buyer's legal due diligence is an assessment of your approach to contractual risk management. If you fail to demonstrate that your approach is robust and minimises exposure as far as practically possible, then a potential Buyer will no doubt seek a lower acquisition price to reflect the future exposure to unmitigated risks, or they may even walk away if the processes are poor and raise red flags.

In conclusion, from my own personal experience, having a rigorous approach to client negotiations, a comprehensive understanding of the five fundamental risks and robust processes to mitigate these risk, then you will be able to *"put your head on your pillow at night, and sleep easier"*, knowing that you have managed your contractual risks to turn the above four reasons to your benefit.

I hope this Blog has provided you with some valuable insights. I am the Director of **Strategic Risk & Compliance Consultancy Limited (SRC)**, which I set up to support businesses in the professional recruitment sector. I am looking to share the best practice solutions I have developed through my experience and the challenges I have faced. I would be happy to explore with you how to achieve the benefits I identified above.

For APSCo Members, I am offering a free 15 minute, no obligation, chat to talk through your current contractual risk review processes and see if SRC can support you by auditing those processes. From there, we can explore if there is a need to enhance your existing processes, and if so, work with you through a collaborative approach to develop bespoke robust contractual risk review processes.

I can be contacted via email stephen@srcconsultancy.co.uk or via LinkedIn [linkedin.com/in/stephenrookes](https://www.linkedin.com/in/stephenrookes). Details of the specialised consultancy services offered by SRC are set out on my website www.srcconsultancy.co.uk.

