

The Cost of Missing the Notice – When Contract Management Becomes Litigation



Procurement and Supply Chain Management Made Simple.

Foreword – When a Routine Contract Becomes a Legal Dispute

Routine maintenance contracts rarely look like litigation material. They are usually modest in value, operationally familiar, and renewed with little thought. Yet the largest housing associations in England spent £10 billion on repairs and maintenance in the year to 31 March 2025, according to the Regulator of Social Housing, much of it through these service agreements. When deadlines, notice requirements, and later correspondence don't align, an ordinary exit can become a contested claim.

The case study running throughout arose from a real dispute between a Hertfordshire-based housing association and a specialist maintenance supplier. The service related to a building that had since been sold, yet the parties disagreed over whether termination had been validly effected. The housing association maintained that it had communicated termination by telephone before the relevant deadline, followed by written confirmation, while later supplier correspondence appeared to acknowledge that the relationship was ending.

The financial consequences proved wholly disproportionate to the simplicity of the original arrangement. The annual maintenance charge was substantially lower than the eventual County Court claim, which approached £20,000 once alleged continuing contractual liabilities, court fees and disputed future charges were added together. Reaching a complete, documented resolution then required a painstaking review of correspondence, invoices, credit notes, settlement wording, and procedural steps, absorbing management time far beyond the service's value.

For clarity, the matter is described throughout as the Facilities Maintenance Dispute, which keeps attention on the commercial lessons rather than the individual organisations. Its value lies in the sequence of events: notice, acknowledgement, disputed liability, accounting reconciliation, settlement and discontinuance. Each stage shows how easily operational closure can separate from contractual, financial, and legal closure when ownership is unclear, and the supporting evidence doesn't tell one consistent story.

The central lesson extends well beyond a single maintenance contract. A service can be commercially finished long before the contract is contractually, financially, or legally finished, and procurement must deliberately manage all four dimensions. Research by World Commerce & Contracting suggests the average business loses almost 9% of value annually through poor contract management. Renewal controls, written notice, evidence, invoice treatment, settlement authority and formal closure together determine whether an organisation genuinely exits a contract.

The Contract Clause Nobody Notices Until It Matters

Renewal and termination clauses are often treated as administrative detail until the service is no longer wanted. An automatic renewal provision can convert an expected expiry into another contractual period, while a missed notice date can preserve liabilities that operational teams believed had disappeared. In the Facilities Maintenance Dispute, a comparatively modest annual arrangement ultimately produced a County Court claim after the parties disagreed over whether termination had actually taken effect.

The problem is rarely the absence of a termination clause; it is whether anyone has translated that clause into an operational control. Procurement teams should identify the earliest date on which notice may be served, the final permissible date, the notice period, the authorised recipient and the permitted method of service. A contract requiring “three months’ written notice” carries materially different risk from one that simply ends on its stated expiry date.

Public guidance has moved decisively towards planning exit from the outset. Good practice guidance on the commercial lifecycle from the National Audit Office (NAO), published in February 2025, states that plans for potential routes to end a contract should be built in from the start. The Cabinet Office Contract Management Playbook, published in March 2026, sets out eleven policy principles and six key objectives, and encourages a wider contract register.

Public bodies also face transparency duties once a contract ends. Under section 80 of the Procurement Act 2023, in force since 24 February 2025, a contracting authority must publish a contract termination notice within 30 days of a public contract terminating, whether through expiry, termination, discharge, rescission or court order. Private utilities are excluded. The broader message is that exit belongs in the lifecycle from award, rather than being improvised when renewal looms.

Written Notice Means Written Notice

A telephone call can communicate commercial intention perfectly clearly while still failing to satisfy a contractual requirement for written notice. That distinction becomes critical where the contract prescribes writing, delivery to a named address, service on a particular officer or another defined procedure. In the Facilities Maintenance Dispute, an asserted pre-deadline telephone termination became central because written confirmation followed later, raising the question of whether commercial communication and contractual notice could be treated as equivalent.

English contract law generally respects the formalities parties choose. In Rock Advertising v MWB Business Exchange Centres (2018), the Supreme Court upheld a clause requiring variations to be in writing and signed, so an alleged oral agreement to reschedule licence fee arrears was ineffective. The case concerned variation, not termination, but the lesson travels: where parties specify how rights must be exercised, informal conversations cannot be assumed to achieve the same result.

Method of service matters as much as content. In Greenclose v National Westminster Bank (2014), the bank needed to serve notice extending an interest rate collar by 11 am on 30 December. The customer’s fax machine was switched off for the holidays, so the bank left voicemails and sent emails. The High Court held that email was not a permitted method under the agreement, so the notice was ineffective and the extension failed.

That does not mean every imperfect notice is automatically ineffective. In Mannai Investment v Eagle Star (1997), the House of Lords upheld break notices stating the wrong date because a reasonable recipient would have understood the intention. Lord Hoffmann nonetheless observed that if a clause required notice on blue paper, pink paper would not do. Outcomes therefore depend on the contractual wording, the defect itself, the recipient’s understanding and applicable

legal principles.

Procurement should therefore avoid turning a practical rule into an absolute legal proposition, while still adopting a strict operational standard. The safer approach is simple: comply exactly with the notice clause, use a prescribed method that produces proof of delivery, retain evidence of dispatch and receipt, and obtain legal advice promptly where a deadline, address or method is disputed. Exact compliance removes arguments; partial compliance merely invites the other party to test them.

The distinction protects suppliers too. A supplier facing termination needs certainty about whether to keep allocating engineers, holding stock, maintaining insurance or reserving specialist capacity. Informal remarks such as “we will not need the service next year” may shape expectations without ending anything. Procurement professionals should resist treating “the supplier knew we were leaving” as a substitute for evidence: a signed notice, the clause relied upon, proof of authority, a delivery record and any acknowledgement.

The Difference Between Commercial Intent and Contractual Compliance

Commercial reality and contractual reality can separate surprisingly quickly. Operational managers may stop using a service, Finance may remove future budgets, and both parties may discuss final invoices. Yet, the agreement can remain legally alive if its termination machinery has not been satisfied. A contract can end operationally long before it ends contractually, financially, or legally, leaving several separate closure processes running at once, often without anyone noticing they have diverged.

URE Energy v Notting Hill Genesis shows how much can turn on that gap. URE supplied electricity to Notting Hill Genesis, one of London’s largest housing associations, under a four-year contract. On 31 October 2018, URE purported to terminate for an alleged breach concerning meter access, but then revoked that notice after concluding that it first had to allow the customer to remedy. It later relied on a different contractual right.

That second notice, served on 5 November 2018, relied on clause 10.2(d), which permitted termination where the customer passed a resolution for winding up, defined to include amalgamation. Genesis Housing Association and Notting Hill Housing had amalgamated in April 2018. The Commercial Court upheld the termination in 2024, accepting URE’s construction of the payment clause, under which it claimed £3,946,861.56. The Court of Appeal dismissed the customer’s appeal in November 2025.

The decision turned on particular wording and facts, so procurement teams should not generalise the outcome. The underlying warning is clearer: perceived commercial finality does not override the contract’s agreed allocation of rights and remedies. Teams should test every exit against four questions. Has the service stopped operationally? Has the contract ended under its own terms? Have invoices, credits and commitments been reconciled financially? Has any claim or court process been concluded legally?

Why Contract Exit Needs an Owner

Contract exit needs a named owner because deadlines do not manage themselves. Procurement may maintain the central register, but responsibility often sits across contract managers, budget holders, operational teams, Finance, Legal and senior approvers. Without a single accountable person, each participant may reasonably assume that somebody else has diarised the notice date. The failure rarely appears dramatic at first; it surfaces only when renewal occurs, or termination is challenged.

Government contract management guidance explicitly calls for clear ownership, defined roles, and a documented contract management plan, and asks whether a responsibility matrix shows

who is accountable for each key activity. Those principles matter just as much in private organisations. Ownership should establish who monitors expiry, who decides whether the requirement continues, who obtains approval, who signs the notice, and who verifies the right person has received it.

The control begins with a reliable contract register that records the commencement date, expiry date, extension options, automatic renewal provisions, notice period, and notice method. Alerts should arrive early enough to support a genuine commercial decision, not merely to allow time to post a letter. For significant arrangements, a structured review around 180 days before expiry gives the organisation room to decide, approve and act without being driven by the calendar.

At that review, the owner should test continuing need, supplier performance, budget, market conditions, procurement lead time and transition requirements. An organisation deciding to retender may need months for specification, competition, evaluation, governance approval, and mobilisation, and public bodies must usually allow a mandatory eight-working-day standstill period after an award decision under the Procurement Act 2023. A notice deadline that seems comfortably distant can quickly become urgent once you map the timetable.

Authority is another frequent weakness. A notice signed by somebody without delegated authority can create avoidable arguments, particularly where the contract names authorised representatives. Governance should establish who may extend, vary or terminate the arrangement and what internal approval is required. Procurement should preserve the decision record alongside the notice itself, showing not merely that the organisation communicated termination, but that it consciously authorised its commercial consequences before the deadline passed.

Ownership should not end on the final service date. Under the Procurement Act 2023, most public contracts worth more than £5 million must include at least three key performance indicators (KPIs), and performance must be assessed at least annually and on termination. The owner should remain responsible until operational handover, financial reconciliation, statutory publication and records closure are complete, and the evidence file can be archived with confidence that nothing remains outstanding.

When Supplier Conduct Complicates the Picture

Supplier conduct after a disputed termination can make an already difficult situation more complicated. A supplier may acknowledge the customer is leaving, discuss final invoices, arrange equipment removal, or refer internally to a closed account, yet later maintain the contract technically continued. Those communications can be highly significant evidence, but procurement should not assume that acknowledgement alone waives every contractual right or cures every defect in the original notice.

English law distinguishes between contractual rights, waiver by election, estoppel and ordinary commercial communication. In *URE Energy v Notting Hill Genesis*, the Court of Appeal confirmed that a party loses a right by election only if it knows both the facts giving rise to that right and the right itself, following *Peyman v Lanjani* from 1985. URE continued supplying for around seven months after the amalgamation, yet did not waive its termination right.

The court acknowledged the tension with commercial certainty and identified safeguards. Judges should be sceptical of convenient claims of ignorance; a party that has taken legal advice is presumed to know its rights unless it proves otherwise, and estoppel may still apply where there has been an unequivocal representation and detrimental reliance. URE rebutted that presumption only by waiving privilege over its legal advice, an unusual and revealing step for any litigant.

In the Facilities Maintenance Dispute, supplier correspondence acknowledging termination and

discussing outstanding invoices became important because it appeared difficult to reconcile with a later assertion of continuing liability. It did not automatically determine the legal position, but it reinforced the need to examine the whole chronology rather than one isolated clause. Commercial disputes often turn on the interaction of contractual wording, contemporaneous conduct, correspondence, and the credibility of competing explanations.

Every material supplier communication after termination should therefore be preserved and read against the contract. Procurement should look for acknowledgement of the exit date, requests for final payment, cessation of service, collection of assets, closure of purchase orders and references to future obligations. None should be overstated individually. Taken together, however, they can provide a coherent evidential picture of what both parties understood, did, and expected immediately after the purported termination.

The Procurement Evidence File

Once a disagreement becomes formal, the quality of the procurement file can matter almost as much as the quality of the original decision. A chronological evidence pack should include the executed contract, schedules, variations, purchase orders, invoices, credit notes, emails, letters, meeting notes, call records, service reports and approvals. The objective is not volume for its own sake, but the ability to reconstruct who knew what, when, and what action followed.

Government contract management guidance specifically recommends storing records centrally so that they remain accessible. This simple control is critical because disputes often surface long after award and rarely resolve quickly once issued. Official civil justice statistics show that, between April and June 2026, the median time from claim to trial in the County Court was 41.0 weeks for small claims and 55.9 weeks for fast track, intermediate track and multi-track cases.

By the time a claim reaches a hearing, procurement staff, operational managers and supplier contacts may all have changed. An email trapped in a departed employee's mailbox, or an unsigned contract saved locally, can seriously weaken an organisation's ability to establish what happened. The Facilities Maintenance Dispute turned almost entirely on sequence: when the call occurred, when written confirmation was sent, when the supplier acknowledged termination and which invoices then followed.

The file should also distinguish evidence from recollection. A manager may sincerely remember making a call before the contractual deadline, but an itemised call record, contemporaneous email or diary entry will usually be more persuasive than memory reconstructed months later. Procurement cannot manufacture missing evidence after the event. Its best defence is disciplined record-keeping at the point of activity, supported by consistent document naming, version control, central storage and a clear audit trail.

Do Not Confuse an Invoice with the Entire Claim

An unpaid invoice is not necessarily the measure of a contractual dispute. Procurement teams naturally focus on amounts sitting on the purchase ledger because those values are visible, coded and awaiting action. A supplier alleging wrongful termination may instead pursue contractual termination charges, unpaid invoices, interest, costs or common-law damages for the economic value allegedly lost through premature exit. The ledger balance can therefore be only one component of a much larger asserted exposure.

The Facilities Maintenance Dispute illustrates the danger. The disputed annual maintenance charge was substantially below the eventual County Court claim, which approached £20,000, so focusing on the visible invoice would have understated the problem. Once a claim is issued, procurement should reconcile each element separately: invoiced debt, Value Added Tax (VAT), contractual charges, claimed future losses, interest, court fees, recoverable costs, and any credits

the parties have already agreed.

Interest alone can change the arithmetic. Under the Late Payment of Commercial Debts (Interest) Act 1998, a supplier may claim statutory interest on a qualifying business debt at 8 percentage points above the Bank of England reference rate, unless the contract provides a substantial alternative remedy. The supplier may also claim fixed compensation of £40, £70 or £100 for each debt, depending on whether it is below £1,000, below £10,000 or higher.

Accounting treatment should follow the legal and commercial character of each amount. Paying an ordinary invoice discharges a trade debt; paying damages or a negotiated settlement resolves a different liability. Credit notes may be needed where invoices no longer represent amounts properly due, while settlement documentation should specify exactly what the payment releases. Conflating these categories can leave supplier ledgers inaccurate even after the commercial dispute itself has apparently been resolved.

A disciplined exposure schedule is invaluable. It should list each invoice, credit note, contractual charge, damages allegation, interest calculation, legal fee and settlement proposal, with a status and evidential basis for each. That prevents double counting and makes negotiation more rational. Senior management can then compare the realistic downside of defending the claim with the cost of settlement, rather than deciding based on a single headline invoice.

Future Contract Charges and Loss of Bargain

When a customer leaves early, a supplier may argue that its loss extends well beyond invoices already raised. Depending on the contract, it may rely on an agreed termination payment or claim damages for breach. These are different routes. A contractual termination payment arises because the contract itself defines a payment mechanism. In contrast, common-law damages compensate for loss caused by breach and remain subject to causation, remoteness and mitigation.

URE Energy v Notting Hill Genesis falls firmly within the first category. Clause 10.5 required the customer to pay 50% of the contract's remaining value following termination under the relevant provision. The Commercial Court read "value" as the total amount payable over the remaining term, rather than the supplier's net profit, noting that profit is hard to forecast. The resulting sum was a contractual payment, not a general precedent on damages.

Common-law damages work differently. Since Robinson v Harman in 1848, the aim has been to put the innocent party, so far as money can, in the position it would have occupied had the contract been performed. Recovery is limited by remoteness under Hadley v Baxendale and by the duty to mitigate. Procurement should therefore challenge any calculation that multiplies the annual charge by the remaining years and presents the result as automatically recoverable.

Termination charges can be challenged, though the bar is high. In Cavendish Square Holding v Makdessi and ParkingEye v Beavis (2015), the Supreme Court held that a breach-triggered clause is penal only if it imposes a detriment out of all proportion to the innocent party's legitimate interest. Payments triggered by the lawful exercise of a termination right generally fall outside that doctrine, so procurement must read such provisions before serving notice.

When the Commercial Decision Overtakes the Legal Argument

A contractual defence can be credible yet commercially unattractive. Once proceedings begin, procurement must weigh the amount claimed against likely legal spend, management time, evidential uncertainty, distraction and the probability-weighted outcome. In the Facilities Maintenance Dispute, a claim approaching £20,000 created the uncomfortable possibility that defending the principle could consume a substantial share of the sum in dispute before any judgment was reached at all.

Court fees form part of that calculation. Under the Civil Proceedings Fees Order 2008, as amended, issuing a money claim above £10,000 and up to £200,000 costs 5% of the claim value, so a £20,000 claim attracts a £1,000 issue fee. Hearing fees currently stand at £619 on the fast track and £1,334 on the intermediate and multi-tracks, before solicitors, counsel, witnesses or internal management time are considered.

Recoverable legal costs are also more constrained than many managers assume. For most claims issued on or after 1 October 2023, fixed recoverable costs (FRC) apply on the fast track, covering claims up to £25,000, and on the new intermediate track for claims up to £100,000. A winning party may therefore recover only a fixed sum, leaving any excess legal spend unrecovered, however convincingly its defence was ultimately vindicated.

The Department for Transport faced a far larger version of the same calculation in 2019. Eurotunnel challenged the procurement of no-deal Brexit ferry capacity and claimed about £80 million. The NAO reported that the department judged it unlikely to defend the challenge successfully, faced an expedited trial, and set a £35 million negotiating ceiling. It settled for £33 million, payable in three £11 million instalments, with legal costs of about £1 million.

The correct comparison is therefore not simply “pay or fight”. It is expected settlement cost against expected litigation cost, adjusted for prospects of success and the value of management attention. Procurement should document that judgement by recording the claim value, credible defences, external advice, estimated costs, internal resources, settlement range, and consequences of losing, so settlement appears as a reasoned value-for-money decision rather than capitulation.

Mediation and the Courts’ Expectations

Litigants can no longer treat settlement discussions as an optional courtesy. In *Churchill v Merthyr Tydfil County Borough Council*, decided in November 2023, the Court of Appeal held that courts may lawfully order parties to engage in non-court dispute resolution, provided the order does not impair the very essence of the right to a fair trial. The Civil Procedure Rules (CPR) were then amended from 1 October 2024 to make that power explicit.

The amended CPR adds promoting or using alternative dispute resolution to the overriding objective and requires courts to consider ordering or encouraging it when giving directions on fast track, intermediate track, and multi-track claims. Failing to comply with such an order, or unreasonably refusing to engage, can now affect costs. For smaller disputes, court-provided mediation became compulsory for most money claims up to £10,000, effective from 22 May 2024.

For procurement, the practical implication is that settlement capability should exist before proceedings begin. An organisation should know who can authorise an offer, what range has been approved and what evidence supports its position. The Facilities Maintenance Dispute ultimately ended through negotiated settlement, delivering what the courts now actively promote: lower cost, faster closure, and terms, such as agreed credit notes, that no judgment could have provided.

Settlement Is Not an Admission of Liability

Commercial settlement exists because litigation risk is rarely binary. Parties can fundamentally disagree about liability yet agree that certainty is worth more than another year of correspondence, legal costs, and management distraction. In the Facilities Maintenance Dispute, settlement could therefore be justified without accepting that the disputed termination was ineffective. Payment can buy finality, release, and procedural closure without accepting the supplier’s interpretation of the contract.

Settlement wording should make that distinction explicit. Standard drafting records that payment is made without admission of liability and in full and final settlement of identified claims. The first

expression preserves the payer's position on breach; the second defines what is being extinguished. Neither phrase is decoration. The value of a settlement lies in knowing precisely which liabilities disappear once the agreed consideration has been paid and any conditions have been satisfied.

"Full and final" must also be scoped carefully. A settlement may cover the pleaded County Court claim, contractual liabilities under a named agreement, interest, legal costs and all claims connected with specified services. Wider wording can release unknown claims, while narrow wording may leave peripheral disputes alive. Procurement should align the release with the commercial objective, ensuring neither historic invoices nor future allegations accidentally survive outside the agreed settlement perimeter.

A useful settlement agreement addresses implementation as well as price. It should identify the payment amount, deadline, and bank details; the treatment of invoices and credit notes; the VAT position; confidentiality, where appropriate; costs; discontinuance mechanics; and confirmation that no further sums are due. Where proceedings already exist, those procedural steps are essential, because an agreement that resolves the money but leaves the claim technically alive has not delivered complete closure.

Settlement should therefore be assessed as a purchased outcome. The organisation buys certainty over liability, expenditure, management time, and future claims, which may represent excellent value even when its legal defence remains respectable. Conversely, a poorly drafted compromise can pay away money without securing equivalent protection. Properly structured, settlement is not surrender; it is a controlled exchange of uncertainty for defined, documented and enforceable finality that both parties can rely upon.

Without Prejudice and Subject to Contract

*"Without prejudice" and "subject to contract" perform different functions and should never be merged into a vague formula. In *Rush & Tompkins v Greater London Council* (1988), the House of Lords confirmed that genuine attempts to settle a dispute are generally protected from being used as admissions on the merits. The policy encourages frank compromise, but protection depends on the substance and context of a communication, not simply the heading placed above it.*

*"Subject to contract" concerns formation rather than evidence. It ordinarily signals that negotiations will not bind until a formal agreement is concluded. In *Joanne Properties v Moneything Capital* (2020), the Court of Appeal held that exchanges conducted "without prejudice and subject to contract" did not produce a binding compromise, because the qualification could be removed only by express agreement or necessary implication. Both labels can therefore operate together, each serving its own purpose.*

Baltimore Wharf v Ballymore Properties, decided by the Technology and Construction Court in 2026, shows how costly ambiguity can be. Settlement drafts were headed "subject to contract"; on 24 September 2024, the claimant's solicitors confirmed the agreement was "agreed", and the developer then signed an execution version without that heading. The claimant never signed. The court held that the reservation had not been lifted, so no binding settlement existed, and the litigation continued.

Procurement teams can therefore use the combined wording during active negotiation when both protections genuinely apply. "Without prejudice" supports candid compromise discussions, while "subject to contract" prevents an intermediate email from unexpectedly becoming the settlement itself. Once the parties intend final terms to bind, they must be equally clear, documenting authority, agreed terms and the exact moment of commitment, because lingering conditional language can create a second dispute about whether settlement ever occurred.

Never Pay Before the Settlement Terms Are Clear

Payment should follow a concluded settlement, not serve as the way to discover whether one exists. Before funds move, procurement should have a written agreement on the settlement sum, payment deadline, release, costs, interest, VAT treatment and disposal of any proceedings. Where invoices are to be cancelled or credited, identify those accounting steps in advance, so payment cannot later be characterised as satisfying a different liability.

Scope is particularly important. An illustrative £19,000 settlement may appear clear until one party later argues that accrued interest, court fees, another invoice or a future contractual charge falls outside it. The agreement should state whether the figure is inclusive or exclusive of each relevant component and whether it extinguishes all claims arising from the identified contract. Ambiguity at this stage converts one dispute into a second dispute about the settlement.

VAT requires specific attention because labels do not determine tax treatment. His Majesty's Revenue and Customs (HMRC) confirmed in Revenue and Customs Brief 2 (2022), applying from 1 April 2022, that most early termination fees are further consideration for the original supply and therefore follow its VAT liability, even when described as compensation. By contrast, genuine damages payments with no supply in return can fall outside the scope of VAT.

The settlement document should therefore reflect the actual transaction, rather than assume that every payment is automatically taxable or automatically outside VAT. HMRC's earlier Brief 12 (2020), which took a broader view, was suspended in January 2021 and later replaced, illustrating how unsettled the boundary can be. Where termination charges, damages and previously invoiced taxable services are mixed, Finance and tax advisers should confirm the treatment before signature.

Where proceedings are underway, the parties should agree the court-closing mechanism before payment. The claimant might undertake to file and serve a notice of discontinuance, ordinarily on Form N279, within a set number of days of cleared funds, and to provide a copy to the defendant. The payer should know exactly what evidence will demonstrate completion. "We will withdraw the claim" is far less useful than a defined obligation.

The settlement should also specify what happens if either party fails to perform, including late payment, the continued validity of releases, confidentiality and the treatment of existing proceedings. Because a settlement agreement is itself a contract, legal review is sensible for material disputes. Only once those points are fixed should payment authority be released. That sequencing protects both sides: the claimant knows what will be paid, and the defendant knows what rights are surrendered.

The Forgotten Accounting Problem – Cancelling the Supplier Invoices

A legal settlement does not automatically repair the purchase ledger. If supplier invoices remain posted as unpaid while the settlement is paid separately, Finance can be left with an apparent trade liability even though the commercial dispute has ended. This creates risks of duplicate payments, distorted aged-creditor reports, and confused supplier statements. Procurement therefore needs to connect the legal settlement to the accounting records, rather than treat them as unrelated administrative processes.

In the Facilities Maintenance Dispute, invoices forming part of the disagreement were not to remain payable as ordinary invoices, so corresponding credit notes were required to reverse them. Each credit note should clearly identify the original invoice and be processed through the same supplier account. Otherwise, paying a separate settlement can leave the original invoice outstanding, prompting automated reminders, escalation or accidental payment months later by somebody unaware of the agreement.

Billing control failures can reach a far larger scale. In December 2013, Serco agreed to repay £68.5 million, excluding VAT, to the Ministry of Justice after an audit of electronic monitoring billing, and G4S agreed to repay £108.9 million in March 2014. A Cabinet Office review of 28 major Serco and G4S contracts, worth £5.9 billion, identified seven recurring weaknesses in financial control, transparency, and transition management.

These distinctions matter for audit. An auditor reviewing the supplier account should be able to trace the original invoice, the reason it was disputed, the credit that reversed it and the separate authority for any settlement payment. That creates a coherent chain between contractual events and financial records. Marking an invoice “settled” without the correct accounting document can conceal rather than resolve the ledger position, particularly where VAT has already been recorded.

A practical control is a settlement reconciliation schedule that shows every affected invoice, credit note, and separate settlement amount. Each line should record the document number, gross value, VAT element, posting status and resulting balance. Procurement, Finance and the budget owner can then sign off the same picture before payment. After settlement, the supplier ledger should tell the same story as the signed commercial agreement, with no unexplained residual balance.

Credit Notes Before Settlement Payment

The safest sequence is usually to establish the correct ledger position before settlement money leaves the organisation. If disputed invoices have already been posted, Finance should process valid matching credit notes to reverse those trade liabilities. The supplier account can then be reconciled to confirm which ordinary invoices, if any, remain legitimately payable. Only after that reconciliation should the separately authorised settlement payment be released under the agreed terms.

That sequencing reduces the risk of paying twice. If an organisation pays an illustrative £19,000 to compromise a claim while a £7,000 disputed invoice remains open, an automated payment run could later pay the invoice as well. Accounts payable systems are designed to pay approved liabilities, not to interpret litigation settlements. Correct ledger treatment removes the liability, rather than relying on someone to remember to ignore it when preparing the next payment run.

Credit notes must themselves be checked. The value should correspond with the invoice being reversed, including the correct VAT amount, and Finance should verify that both documents sit on the same supplier account. Partial credits require particular care because they may intentionally leave a residual balance. Procurement should keep the supplier’s credit note alongside the settlement correspondence, so the reason for each adjustment remains evident long after personnel change.

Once reconciliation is complete, post the settlement using the organisation’s appropriate accounting treatment, never against an invoice that has just been cancelled. Coding depends on the payment’s substance and internal policy, and Finance may need to distinguish service expenditure, legal settlement costs, court fees, and recoverable VAT. Procurement’s role is to give Finance a contractual explanation accurate enough to support that judgement without later reconstruction.

A Settlement Payment Is Not an Invoice Payment

An invoice requests payment for a supply, or another amount asserted to be contractually due. A settlement payment is consideration given to resolve disputed rights on agreed terms. The two can overlap for VAT purposes, but they are not synonymous. Where original invoices have been fully credited, the later settlement should not be described or processed as payment of those

invoices unless the settlement agreement expressly provides for that treatment.

Tax treatment turns on substance rather than vocabulary. Calling a payment “damages”, “settlement” or “compensation” does not decide its VAT treatment; the underlying contractual exchange must be analysed. A payment that is in reality further consideration for services supplied will usually carry VAT, while one that compensates for loss without any supply in return may not. Getting the description right in the agreement makes the correct tax analysis far easier to support.

Three records must align: the settlement agreement, the supplier ledger and the payment instruction. If the agreement says invoices have been cancelled and replaced by an all-inclusive settlement, Finance should not receive an instruction describing the transfer as payment of those cancelled invoices. Conversely, if the settlement expressly clears genuine unpaid invoices, identify that element separately so accounting and VAT treatment both follow commercial reality.

Clear separation also improves management reporting. Trade spend, damages, legal settlements and court expenditure answer different questions about supplier performance and procurement value. Coding everything as ordinary contract expenditure obscures the true cost of a failed exit and weakens lessons learned. Financial closure therefore requires more than a zero bank balance: the accounting records must accurately explain why money changed hands and on what legal basis.

The distinction matters most when shaping future contracts. If settlement costs are buried within routine supplier spend, category managers may underestimate the consequences of weak termination controls. Recording them transparently lets governance teams identify recurring causes, quantify leakage, and improve templates and training. Accurate accounting thus becomes commercial intelligence rather than mere bookkeeping, turning a painful dispute into evidence that helps prevent the next one.

Closing the Court Proceedings Properly

Payment does not, by itself, end issued County Court proceedings. Under CPR 38.3, a claimant wishing to discontinue all or part of a claim must file a notice of discontinuance and serve a copy on every other party, ordinarily using Form N279. Procurement should therefore distinguish carefully between “the money has been paid” and “the proceedings have formally ended”, because they are separate events that can be weeks apart.

Where permission is not required, CPR 38.5 provides that discontinuance takes effect on the date the notice is served on the defendant, not simply when the court receives the form. Subject to the defendant’s right under CPR 38.4 to apply within 28 days to set the notice aside, the claim then ends against that defendant, although costs questions may remain. The defendant should keep the served notice alongside the settlement.

The settlement should allocate responsibility for this step before releasing funds. Commercial wording commonly requires the claimant, once payment clears, to file and serve the notice promptly and send evidence to the defendant. The exact mechanism should fit the proceedings and any legal advice received. Procurement need not become the litigation manager, but its settlement checklist should contain a specific legal-closure milestone rather than ending at payment.

The Facilities Maintenance Dispute makes the distinction especially clear. Operationally, the maintenance requirement had ended; financially, the parties could reconcile invoices and credits; commercially, they could agree and pay a settlement. Legal closure, however, required a separate procedural act in the County Court. Missing that final step leaves an avoidable loose end long after everyone involved has assumed, quite reasonably but wrongly, that the dispute is finished.

Costs After Discontinuance

Discontinuance should never be assumed to make costs disappear. Under CPR 38.6, the general rule is that a claimant who discontinues is liable for the defendant's costs incurred on or before the date of service of the notice, unless the court orders otherwise. That general rule does not apply to claims allocated to the small claims track. Settlement drafting should therefore address costs expressly, rather than leaving the position to procedural default.

The small claims exception does not mean that every party bears its own expenses in every circumstance. Separate small claims costs rules, with their own limited exceptions, still apply, and a claim may not yet have been allocated to any track when settlement occurs. A claim approaching £20,000 would ordinarily be allocated to the fast track, where CPR 38.6 and the FRC regime both apply.

Procurement professionals should therefore avoid simplistic assurances in either direction, such as "the claimant always pays the costs" or "there are no costs in small claims". Both are misleading. The settlement agreement can remove that uncertainty by stating exactly how each side's legal costs and court fees are treated, including whether the claimant's issue fee is absorbed within the settlement sum or remains separately recoverable.

Commercially, the parties may agree that the settlement sum includes all interest, fees and costs, or that each side bears its own legal expenditure. Either approach works if it is clearly expressed. The aim is to prevent a claimant from receiving the agreed sum and later asserting an additional entitlement, or a defendant from seeking costs the claimant believed were settled. The release and costs clauses should always be read together.

Costs are another reason why commercial resolution can overtake legal argument. Even a party confident in its interpretation must consider what it will spend proving that interpretation, what it might recover under the FRC regime and what internal effort cannot be recovered at all. A well-drafted settlement converts those uncertain future amounts into a known figure, and that certainty has an economic value the decision-maker should see.

The Correct Sequence for Commercial Settlement

Commercial settlement works best as a controlled sequence rather than a single payment event. In shorthand, the sequence runs: agreement, authority, credit notes, ledger reconciliation, settlement confirmation, payment, discontinuance, evidence of court closure and file closure. The precise order can be adjusted where legal or tax advice requires, but the control principle remains constant: each stage should create the precondition for the next, and none should be skipped.

Jumping directly from negotiation to payment weakens leverage and increases the risk that accounting or procedural obligations remain unresolved afterwards. The final file should contain the executed contract, termination correspondence, claim documents, evidence chronology, settlement authority, binding settlement record, invoices, credit notes, payment evidence, Form N279 where applicable and confirmation of closure. A costly dispute should at least leave behind organisational knowledge that reduces future exposure.

That sequence returns to the central lesson of the Facilities Maintenance Dispute. Genuine closure arrives only when the operational, contractual, financial and legal dimensions align and the evidence proves it. The objective is not merely to stop a service or pay a settlement; it is to leave no unintended obligation, ledger balance, live proceeding or evidential gap behind. Lessons learned should then flow back into registers, alerts and template clauses.

When Contract Exit Goes Wrong at Scale

The same failures that complicate a modest maintenance dispute become far more expensive in large public contracts. The Nuclear Decommissioning Authority awarded a contract worth up to

£6.2 billion over 14 years to decommission 12 sites. After the High Court found in July 2016 that the procurement outcome had been wrongly decided, the authority settled claims brought by Energy Solutions and Bechtel for £97.3 million in March 2017.

The NAO estimated the episode cost the taxpayer more than £122 million, including £13.8 million in external advisers and legal fees and £10.8 million in staff time. The authority also terminated the contract nine years early, with a 24-month notice period running until 31 August 2019. Even at that scale, an orderly exit depended on clear notice provisions, a defined transition period and careful planning for continuity.

Carillion's liquidation on 15 January 2018 tested exit planning differently. The company held around 420 public sector contracts, and the NAO estimated in June 2018 that the collapse would cost taxpayers about £148 million, excluding pension liabilities. The episode showed why exit plans, accurate registers and clear information on contractual obligations need to exist before they are required, rather than being assembled hurriedly under pressure.

The scale differs, but the controls are recognisably the same. Teams must understand notice provisions before using them, decisions must be evidenced, settlements must be authorised against realistic costings, and transitions must be planned before they are triggered. Whether the contract is a £6.2 billion decommissioning programme or a single building's maintenance service, closure depends on disciplined management of operational, contractual, financial and legal risk.

The Procurement Manager as Commercial Coordinator

The procurement manager should coordinate the commercial response without drifting into the role of litigator. That means assembling the contract, chronology, supplier correspondence, invoices, approvals and financial exposure, then ensuring Finance, senior management and legal advisers work from the same facts. In the Facilities Maintenance Dispute, procurement could connect commercial context with evidence, leave pleadings, procedural strategy, and advocacy to qualified advisers, and keep senior decision-makers informed throughout.

That distinction matters because contract disputes cut across functions. Finance understands ledger treatment and payment controls; operational teams know what was delivered; senior management holds settlement authority; legal advisers assess liability and procedure; procurement understands the commercial history and supplier relationship. The coordinator's task is to integrate those perspectives, identify gaps, and maintain momentum without presenting personal legal opinion as formal advice.

Government commercial standards support that collaborative model. Government Functional Standard 008: Commercial (GovS 008) requires managing supplier relationships according to value, complexity, and risk, with senior ownership and a defined process for resolving commercial or legal disputes. Procurement should therefore drive dispute coordination, while governance determines when technical legal responsibility passes to specialists and who has authority to approve any resulting settlement.

The scale of public procurement makes disciplined coordination economically significant. The NAO estimates that £407 billion, around a third of £1.2 trillion of public sector spending, was spent on goods and services in 2023-24, with central government accounting for £248 billion. Its good practice guidance describes a commercial lifecycle that continues through contract management to exit and transition, rather than ending at contract award.

Coordination also depends on capability. The Contract Management Playbook links training accreditation to a contract's criticality, complexity and value through bronze, silver and gold tiers, reflecting the principle that the most significant contracts deserve the most capable managers. Private sector organisations can borrow the same logic, ensuring that whoever coordinates a

dispute has enough commercial authority, legal literacy and access to records to keep every function aligned.

What Should Have Happened at Contract Award

The safest exit starts at award. At mobilisation, procurement should record the commencement date, expiry date, extension options, automatic renewal provisions, minimum notice period and prescribed method of service, and name a contract owner with documented authority and responsibilities. An organisation that establishes these controls only as expiry approaches has already surrendered much of the time needed for an orderly, well-considered commercial decision.

The register should convert legal wording into actionable dates. If a three-year contract requires twelve months' notice before it ends, the register should show the final service date, the latest valid notice date, and earlier internal decision points, supported by several reminders rather than a single calendar entry. The objective is not merely to remember expiry, but to create enough time for evaluation, approval, competition and transition.

The notice procedure should also be recorded in plain operational language. A clause requiring written notice, sent to a registered office by a specified method and deemed received after a defined period, can be translated into a short instruction for the contract owner. That instruction does not replace the contract; it makes compliance easier. The executed agreement and variations should remain available so the instruction can always be checked.

The Facilities Maintenance Dispute shows the cost of leaving those controls implicit. Had the notice deadline, authorised sender, required method and evidence of receipt been captured at award, later disagreement over a telephone call and subsequent written confirmation would have been far less likely. Contract registers are therefore not passive databases; when properly designed, they are control systems that turn obligations into timely management action before they become disputes.

What Should Happen 180 Days Before Contract Expiry

Six months before expiry is a useful internal control point for many routine and medium-risk contracts, although complex arrangements require action much earlier. At 180 days, the contract owner and procurement should review supplier performance, continuing need, budget, remaining extension rights, notice requirements and replacement lead time. The decision should come early enough to preserve every realistic option, rather than forcing renewal because the work started too late.

Government contract management guidance advises that planning for exit on larger contracts should begin about 12 to 18 months before the contract is due to end, with a draft exit plan written at the start of the contract, or even at award, and reviewed at least annually. For many less complex arrangements, treat 180 days as a minimum structured decision point rather than a universal starting date.

Performance evidence should always come first in that review. The review should assess KPIs, service failures, complaints, pricing, innovation and relationship quality alongside the organisation's future requirements. Renewal should never occur simply because the incumbent is familiar. Equally, retendering should not be automatic where performance is strong and a lawful, commercially attractive extension remains available. The review should decide whether to extend, compete, insource, redesign or discontinue the requirement altogether.

Public bodies extending or modifying a contract must also confirm that the change is permitted. Under sections 74 and 75 of the Procurement Act 2023, modifications must fall within the permitted grounds, and many require publishing a contract change notice before they take effect.

An extension that seems commercially sensible can still be unlawful if the original contract did not clearly and unambiguously provide for it from the outset.

The review must end with authority, not merely discussion. A named decision-maker should approve the preferred strategy, procurement should confirm the implementation timetable and the contract owner should verify the final notice date. If termination is chosen, prepare the written notice early enough to resolve any questions about authority or method of service. The 180-day review succeeds only when it produces an owned, dated and evidenced plan.

Lessons for Supplier Relationship Management

A dispute does not automatically destroy the supplier relationship. Mature Supplier Relationship Management (SRM) distinguishes robust commercial challenge from personal hostility. The Facilities Maintenance Dispute reached County Court proceedings. Yet the parties could still address the issues through structured correspondence, reconciliation of invoices and credit notes, negotiated terms, and an agreed closure mechanism. Professionalism becomes more important, not less, once both sides have hardened their positions.

GovS 008 states that supplier relationships should be collaborative and mutually beneficial, aimed at reducing risk, improving efficiency and securing value for money, while also requiring a defined process for handling disputes. Collaboration does not mean avoiding disagreement. Effective SRM creates channels to escalate, document and resolve disagreements without unnecessary damage, keeping communication factual even while each party continues to defend its contractual position vigorously.

Communication quality is often decisive. Correspondence should separate facts from allegations, identify the contractual provision in question, state the commercial outcome sought and avoid inflammatory language. Offers should be clear about status and authority. When exploring settlement, both sides benefit from knowing what remains disputed and what has already been agreed, because clear writing stops misunderstandings from becoming fresh issues layered on top of the original disagreement.

Adversarial procedure and professional behaviour are not opposites. An organisation can defend its contractual position, challenge invoices and prepare for court while still communicating respectfully and exploring proportionate settlement. When the economics favour compromise, a professionally maintained relationship can accelerate resolution and reduce costs. Even if the parties never trade again, the quality of the exit affects cost, reputation, management time and the likelihood of secondary disputes.

Ten Controls That Could Prevent the Same Problem

First, maintain a complete contract register containing expiry, extension and notice dates. Second, create multiple alerts well ahead of every contractual deadline. Third, name a contract owner with explicit accountability for renewal and exit. Together, these controls address the most common structural weakness: everyone assumes someone else is watching the calendar. A contract that cannot identify its owner, next decision date and final notice date already carries avoidable risk.

Fourth, translate each notice clause into a written operational instruction covering authority, recipient, address and service method. Fifth, require termination notices to be written, approved and evidenced. Sixth, obtain and retain acknowledgement of receipt wherever possible. These controls will not eliminate every legal argument, but they dramatically improve the evidential position by replacing recollection and informal conversation with contemporaneous documents that can be produced immediately if challenged.

Seventh, maintain a central evidence file containing the executed contract, variations, emails, call records, invoices, credit notes and approvals. Eighth, reconcile disputed invoices and process

any credit notes before making settlement payments. These two controls connect the commercial story to the financial one, ensuring that the documents explaining why a contract ended also explain why money did, or did not, change hands afterwards between the parties.

Ninth, establish a formal escalation route that identifies when Finance, senior management, and legal advisers become involved, and who may authorise settlement within what range. Early escalation preserves options, including negotiation and mediation, that the courts now actively expect parties to consider. Late escalation tends to arrive after positions have hardened, evidence has dispersed and court fees, legal costs and management time have already begun to accumulate.

Tenth, require formal closure across all four dimensions: operational, contractual, financial and legal. Confirm service cessation, conclude contractual rights, reconcile supplier accounts and formally end any proceedings. The final file should record lessons learned and feed them back into templates, registers and training. The strongest control is therefore circular, because every difficult exit should improve the organisation's ability to manage the next contract before another dispute develops.

Summary – Contract Exit Is Part of Contract Management

Procurement discipline does not end when a competition closes, or a contract is signed. The NAO describes a commercial lifecycle extending from identifying need through procurement and contract management to exit and transition. Across a public procurement estate worth hundreds of billions of pounds each year, and an even larger private sector supply base, the quality of exit management affects a vast volume of spending and commercial performance.

The Facilities Maintenance Dispute shows how quickly a routine exit can become disproportionate. A service regarded operationally as finished became a County Court claim approaching £20,000 because notice, contractual interpretation, supplier expectations, invoices and procedure did not align. The lesson is not that every disputed termination ends in litigation, but that weak closure controls can amplify a modest contract into a much larger financial and management problem.

The case law points the same way. Rock Advertising and Greenclose show that agreed formalities matter; URE Energy v Notting Hill Genesis shows that a contractual termination payment can dwarf annual charges; Baltimore Wharf shows that settlement itself needs disciplined documentation; and the Eurotunnel and Magnox settlements show that commercial judgement often decides outcomes. Each confirms that a contract can be commercially finished long before it is legally finished.

The lasting lesson is prevention rather than litigation. A well-maintained register, early expiry review, named owner, correct written notice, reliable evidence file, disciplined invoice control and defined settlement process cost very little compared with a contested claim. Effective procurement manages not only how organisations enter contracts, but how they leave them, and genuine closure arrives only when delivery, obligations, records and proceedings all tell the same completed story.

Additional articles can be found at [Procurement and Supply Chain Management Made Simple](#). This site looks at procurement and supply chain management issues to assist organisations and people in increasing the quality, efficiency, and effectiveness of their product and service supply to the customers' delight. © Procurement and Supply Chain Management Made Simple. All rights reserved.

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