

WHAT IS THE DIFFERENCE BETWEEN A MEMORANDUM OF UNDERSTANDING AND A CONTRACT?

1. What is a Memorandum of Understanding (MOU)?

A 'Memorandum of Understanding' (also known as an 'MOU') is used to record a relationship of goodwill between two or more parties. An MOU is not usually legally binding (ie. it is not enforceable in a court of law or by some other legal process). You should only use an MOU when you are **not** making promises you want to be able to legally enforce.

The terms and wording of the document are important. Calling a document an 'MOU' is not enough to make it one. You should include a statement such as: "The parties do not intend this MOU to be legally binding", to help make your intentions clear. You should also use language such as "Party A **may** do abc" instead of "Party A **shall** do abc".

An MOU may still be legally binding even if you follow these suggestions. For example, the parties may agree on all the terms of an agreement between themselves, put them in writing and sign them, but also state that they will hire a solicitor at a later date to put the agreed terms into a formal agreement (more precise but no different in effect). If it is clear that the parties intend the agreement to be binding, and the terms are clear and certain enough to be enforceable, the MOU will be legally binding.

If you are in doubt about whether an MOU is binding or not, please contact us for advice before signing or agreeing to anything.

2. What is a Contract?

A contract is a legally binding agreement between two or more parties, which sets out what each party must and must not do. Most commercial transactions are governed by a contract, whether you are buying groceries or purchasing a house.

For an agreement to be legally binding it must contain three basic elements:

- a. An offer and acceptance of that offer.
- b. Each party must give away something of value (known as 'consideration').
For example, money from Party A in return for a product or service from Party B.
- c. An intention to create a legal relationship.
Each party must be willing to enter into a legally binding agreement.

Other elements that may be relevant in deciding whether an agreement is legally binding or not include:

- a. Legal capacity of the parties.
For example, factors such as a party's age and mental health may affect their ability to understand what the agreement is about.

- b. Genuine consent of the parties.
For example, a party's consent may not be genuine if they agree to something because of a threat.
- c. Whether the agreement is certain and complete.
For example, an agreement may be legally binding if the terms are clear and certain enough to be enforceable, even though the parties state that they will hire a solicitor at a later date to put the terms into a more formal agreement.
- d. Whether the agreement is legal.
An agreement to commit a criminal act is not legally binding.

3. What should I do if I need to enter into an MOU or contract on behalf of the University?

A proposed MOU or contract between the University and another party should not be signed until your Faculty or Directorate decides:

- a. whether legal advice is required. Not all MOUs or contracts will need to be the subject of specific legal advice (eg. if the OGC has previously provided advice on standard terms and conditions of a contract or a standard form of MOU). However, most contracts and MOUs will benefit from a review by one of the lawyers in the OGC, particularly if it involves a new arrangement or if the University is making a financial commitment. If you are unsure, please contact us for advice before signing or agreeing to anything.
- b. who has the authority to sign the document on behalf of the University. The [Delegations of Authority Policy and Register](#) sets out who can sign documents on behalf of the University in different circumstances. However, the Delegations Policy does not address every situation. If you are not sure who should sign a document ask your supervisor or the head of your Faculty or Directorate.