WBL Logbook Sheet Template

Competency e.g. 1	Learning Outcome e.g. 1.1	Example Number
2	**2.1**	1

Evidence provided
e.g. letter to client dated 01.01.2017, Telephone attendance note dated 01.01.2017

Email to client dated 17.02.2022

Explain how the example meets the learning Outcome and how the evidence shows this

Method of communication: I chose to communicate with my client for this particular part of the matter over email.

Why this was the most effective method of communication: this method was the most effective method of communication for explaining the legal issues arising out of the contract because my client had not dealt with contract negotiations before, and I felt that it would be more beneficial in terms of their understanding to document my advice in an email. The contract was for some important software that the business had been using for some years and the contract was up for renewal. I was instructed to review the Terms & Conditions and provide advice on whether they were acceptable. On review of the terms, I identified that they were not acceptable due to issues relating to the liability and indemnities in the agreement.

Previous to my email dated 17.02.2022, I had spoken with the client over the phone briefly prior to sending the email, however she did not have much general knowledge about data protection or intellectual property indemnities. I therefore decided that it would be best for me to set my advice out in written form using suitable language so that the client could process the information easier, because I understand that it can be difficult to process advice over the phone if you do not understand what certain terminology means.

In my advice email, I thoroughly explained why we would expect to be indemnified for third party intellectual property breaches and that we cannot quantify the cost of a breach, meaning that we would expect an uncapped indemnity. I then detailed why it would be a huge risk to accept the supplier's terms relating to data protection breaches. Again, we would expect to be indemnified in full against any data protection breaches caused by the supplier, and the supplier wanted to limit the indemnity to the cost of the contract, which was below £10,000. By using email to communicate with the client, I was able to go into detail about the potential fines that the ICO could issue, referring to figures to make it clear that the potential fines and the amount the supplier wanted to cap their liability at were hugely different. The client would then be able to refer back to the written legal advice rather than trying to remember complex discussions over a phone call.

Reflection and evaluation **Describe what you learnt from the activity you undertook to meet the Learning Outcome. You may want to complete this section at a later date once you have had time to reflect on your practice and experience.**		
I learnt that when dealing with different clients, it is important to consider which method of communication is the most appropriate in the circumstances. In this instance, giving advice in writing allowed the client to digest the information and then come back to me with any questions on specific aspects of the email. Giving advice over email also helps the client to address the matter with their colleagues as they can refer back to the advice in the email.		
Date work completed: (i.e. evidence date)	17/02/2022	
Applicant's Name **Please print name**	**Applicant's signature** **I confirm that the work within the evidence is my own work**	**Date**
[redacted]		Click here to enter a date.
Supervisor's Name **Please print name**	**Supervisor's signature** **I confirm that I supervised the applicant's work referred to within the logbook sheet and the evidence**	**Date**
[redacted]		Click here to enter a date.

[redacted]
Sent: 17 February 2022 15:08
To: [redacted] <[redacted]
[redacted] [redacted]

Hi [redacted]

Given that [redacted] are not willing to make any amendments to their Terms & Conditions, we need to consider what the deal-breakers are.

The first issue is in relation to intellectual property. We are paying for a license to the software which is intellectual property. Clause 3 states that we acknowledge that [redacted] own all intellectual property rights in the software, meaning that they are confident that they own the rights to it. As a result, we would expect to be indemnified against any potential claims from a third party who might say that [redacted] use of the software infringes their intellectual property. The amount that a breach could cost [redacted] is unquantifiable, therefore the indemnity should be uncapped.

The second issue relates to the data protection provisions. [redacted] are happy to sign our Information Sharing Agreement (ISA), but they want clause 11 in relation to the uncapped indemnity removed, or wording to state that their Terms & Conditions will prevail over the ISA. From my understanding of the purpose of the software, a large amount of resident data will be shared between [redacted] and [redacted] and therefore the result of a data protection breach could be both costly and damaging to [redacted] This is why in our standard controller to processor information sharing agreements we ask for an uncapped indemnity against any breach caused by the other party.

The effect of agreeing to the capped indemnity is that we would only be able to recover the price of the contract for a data protection breach, which is £8,864. Under Part 6 of the Data Protection Act (Law Enforcement Processing) there are two tiers of penalties for an infringement of Part 3 of the Act.

The higher maximum amount that a penalty can be issued is £17.5 million or 4% of the total annual worldwide turnover in the preceding financial year, whichever is higher. If there is an infringement of other provisions, such as administrative requirements of the legislation, the standard maximum amount will apply, which is £8.7 million or 2% of the total annual worldwide turnover in the preceding financial year, whichever is higher. By agreeing to the cap, we are leaving ourselves open to a huge financial risk.

If you still wanted to proceed with the software license, your business area would be required to sign off and accept the risk on the fact that there is no intellectual property indemnity and you will also need to consult the Information Security team about this. You would need to discuss the data protection indemnity with the Data Protection team, as they have agreed to caps in the past, but it has generally been where the cap is over £1 million with certain losses excluded from this.

You will then need to take a commercial view on whether to proceed after consulting the Data Protection and Information Security teams.

Kind regards
[redacted]

[redacted]