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Designing contracts for chaos

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The transit systems of two cities in Colombia began from an identical position: they were established under one national law, experienced one financial shock and their contracts had equal room to manoeuvre. One was rescued; the other now sits in liquidation. The cause of this divergence lies neither in the law nor in the scale of the shock.

In Bucaramanga, a rescue deal was on the table – technically agreed, signed off by the finance and transport ministries – but the public owners who had to approve it refused. No official would carry the personal exposure to disciplinary, financial and even criminal sanctions that a signature entailed. In Bogotá, a single capable agency with nearly two decades of experience led the rescue and invited the watchdogs in from the start.

The lesson from these two examples is uncomfortable but simple: room to adapt long-term contracts has to be built in before crises emerge. This flexibility cannot be improvised once the model breaks – because the people who could act will not, unless they are protected when they do. This matters directly in the UK, where High Speed 2 (HS2) and the next generation of rail partnerships face exactly the kind of long-horizon risk that cannot be fully foreseen at the start of a contract.

The rigidity trap

The systems at the heart of this brief are run through a particular kind of arrangement: a long-term public-private partnership, in which a public authority contracts a private operator to deliver an essential service – here, urban transit – for 20 or 30 years at a time. This is awarded under a concession that fixes the terms for the whole of that period.

The difficulty is that no contract written today can anticipate everything that will happen across decades.[1] Demand forecasts prove optimistic, costs move in ways that no one priced in and the financial model that the contract rests on stops adding up. A well-designed concession can share these risks sensibly – but only if it was written to bend.

Many are not. These contracts are often drafted for a single, optimistic future and locked down in the name of certainty, meaning that there is no legitimate way to adjust them when that future fails to arrive. The result is a trap: the contract meant to protect the public interest becomes the very thing that paralyses the authority responsible for it. The result is that authorities are left choosing between an expensive rescue and the collapse of an essential service. This is not a Latin American peculiarity. The UK's experience with the Private Finance Initiative (the country's public-private partnership model for the financing, design and delivery of infrastructure or other assets) shows the same flaw: long-term contracts engineered for stable conditions that have fractured under shocks that they were never built to absorb.

What the two cities show

Bogotá and Bucaramanga are, respectively, Colombia's capital and a mid-sized city to the north. Both built mass-transit networks around dedicated busways under the same national law.[2] These replaced informal private bus services with planned, contracted systems – Bogotá's known as the Integrated Public Transport System (SITP), Bucaramanga's as Metrolínea.

The cities differed in one respect that turns out to matter. Bogotá pioneered this contracting model in the early 2000s with its busway system, TransMilenio, and by the time that the contracts examined here came

1 The impossibility of anticipating every future contingency in long-horizon contracts is the core insight of incomplete-contract theory. See Hart, O. (2003) Incomplete Contracts and Public Ownership: Remarks, and an Application to Public-Private Partnerships. The Economic Journal, 113(486), pp. C69–C76.

2 The shared national framework is Law 86 of 1989, Colombia's mass-transit enabling act. The two systems were also procured under the national procurement code (Law 80 of 1993) and the bus rapid transit financing policy set out by the national economic policy council (CONPES) in document 3167 of 2002.

under strain, the city had accumulated nearly two decades of experience in writing, managing and repairing such contracts. Bucaramanga adopted the same design afterwards, but on a far smaller scale and without that accumulated experience behind it.

Two features of the shared design proved decisive. The first was a split in how the systems were funded: public money built them, but their day-to-day running costs had to be met entirely from passenger fares.[3] When ridership came in well below the optimistic forecasts, fare revenue could not cover operating costs – and neither contract contained any mechanism to close the gap.

The second was a conflict of interest written into the bid itself. In both cities, the established bus operators (which stood to lose their livelihoods to the new system) were themselves awarded its concessions, leaving the public authority dependent on the very firms it was meant to regulate for data, day-to-day cooperation and political acquiescence. The financial shock that followed was common to both systems. It cannot, on its own, explain why one survived and the other did not.

Bucaramanga

The transport network in Bucaramanga was co-financed by national and local government, while the company that ran it – and that carried the disputed debt – was owned almost entirely by the city of Bucaramanga alone.[4] Three smaller neighbouring municipalities sat on its governing assembly and shared in the service, yet contributed little to its cost and bore almost none of its risk. As a result, they had little reason to commit to a rescue that Bucaramanga would mainly pay for.

This rescue of the Bucaramanga transit system almost materialised. By 2023 a debt-restructuring agreement had been negotiated under Colombia's corporate-insolvency law: a 30-year plan to settle the liabilities of Metrolínea, the publicly owned company that runs the city's system, drawn up with the court-appointed administrator and backed by the finance and transport ministries, whose representatives sat on the board. The debt was large but it could be paid, and there was a workable plan for the payments. It was never signed.

3 Funding follows Law 310 of 1996, under which the country co-finances the capital cost of approved mass-transit systems while operating costs fall to travellers. The resulting demand shortfall and operating deficit across Colombia's bus-transit reforms are documented econometrically by Gómez-Lobo. These studies identify the shortfall and deficit as these systems' common financial origin; this brief treats that shock as the constant it holds across both cases and asks why the two diverged despite it. See Gómez-Lobo, A. (2020) Transit reforms in intermediate cities of Colombia: An ex-post evaluation. Transportation Research Part A: Policy and Practice, 132, pp. 349-364; and Gómez-Lobo, A. (2025). Revisiting the Transantiago reform: were all the lessons learned? Research in Transportation Economics, 114, 101676.

4 The distinction matters: national and local government jointly funded the transport system, but the management company, Metrolínea S.A., was almost wholly owned by Bucaramanga, and it was this company – not the wider system – against which the arbitral award and restructuring ran. No formal agreement allocated the system's operating costs among the four municipalities; in practice Bucaramanga sustained both the company and its operating shortfall.

When the agreement came before the assembly, the owners refused it. Behind that refusal lay a second obstacle, shared by every official in the room: signing a binding commitment to settle the debt carried personal exposure to disciplinary, financial and criminal sanction.[5] No one would take that risk. The agreement collapsed, an order to wind up the company followed, and years later the liquidation is still not complete.

Bogotá

Bogotá faced a similar crisis but managed to find a resolution. In 2019, with seven of its concessionaires deep in the red and the service contracting, the city restructured its contracts through a negotiated amendment that redistributed the financial risk that the original deal had ignored. The instrument differed from Bucaramanga's – Bogotá reworked the system's concession contracts, rather than restructuring the management company's debts – but the underlying problem was the same. Crucially, in Bogotá, the institution was able to act.

Three things made the difference. The system was run by a single public company with one board and one chain of command. Consequently, there was no fragmented assembly to veto a deal and a single signature could commit it. That company had run the model for nearly two decades and led the financial rework with its own staff, rather than depending on outside advisers. And, most tellingly, the city did the opposite of what fear would dictate: rather than keeping the oversight bodies at arm's length, it brought them in early, asking the comptroller and the public prosecutor to scrutinise the restructuring as it was being designed.[6] This bought no immunity – the watchdogs were clear that they would still audit the decision afterwards, and they did. But it bought robustness: forced early, their questions produced an amendment so thoroughly justified that the officials signed not because they had been shielded, but because the case for the decision had been made unanswerable. That confidence was precisely what Bucaramanga's signatories never had.

The two cities had the same law, the same financial shock and the same need to adapt. What separated them was not the rulebook but the institution: whether a single authority could act, whether it had the capacity to build a defensible case, and whether the official who signed did so exposed and alone or standing on a justification strong enough to survive the scrutiny that would follow. Bogotá had engineered those conditions before it needed them. Bucaramanga had not – and discovered, too late, that the instruments meant nothing if no one would use them.

5 Colombia's oversight bodies – which review the disciplinary, fiscal and criminal conduct of public officials – are constitutionally autonomous, answering to none of the executive, legislature or judiciary. Signing an instrument that commits public funds therefore exposes the individual signatory to review by bodies outside the official's own chain of command.

6 The city's mayor asked the comptroller general to exercise exceptional oversight of the system's resources in January 2019; the operator, TransMilenio S.A., asked the procurator general for preventive vigilance the following month. Both accompanied the restructuring throughout its design, and the supporting documentation to the May 2019 amendment records their involvement.

What makes adaptation possible

The contrast between the experiences in two cities points to five conditions that determine whether a public authority can adapt a long-term contract when it must. They are not equally weighted, and the order matters.

Two are foundational. Without them, the rest are inert:

- **The capacity to act.** The authority needs the in-house expertise to design a defensible solution, to model the finances, draft the changes and justify them. This is built over years and cannot be bought in from consultants at the moment of crisis because the knowledge that matters is, in part, the accumulated understanding of the contracts and the counterparties themselves.
- **The will to bear the cost.** Someone in authority must be willing to absorb the political and procedural price of acting, rather than waiting out their term and leaving the problem to a successor.

Where those two hold, three further conditions decide whether adaptation actually happens:

- **Legal room to adapt.** The contract and the law must permit adjustment – though, as both cities show, this is rarely the binding constraint. Bogotá and Bucaramanga had identical legal room; only one used it.
- **A clear authority to decide.** One identifiable body must have the power to act and be answerable for the result. Where that authority is fragmented across actors with divergent interests, no one can commit and decisions stall.
- **Protection for the decision-maker.** The official who signs must be able to act without facing disproportionate personal risk. This does not mean immunity from scrutiny, but they should be given the confidence that a well-justified decision will withstand it.

The lesson of these two Colombian cities is that the binding constraints are rarely the obvious ones. The legal room is usually there. What is missing is the capacity, authority, protection and the will to use it – and these cannot be conjured once the crisis has developed. They must be engineered into the system in advance.

What are the lessons for the UK?

The central lesson is that flexibility cannot be improvised in a crisis; it has to be designed into a long-term contract before the crisis arrives. In practice, this means three things.

The room to adapt should be written into the contract itself. This includes defining in advance the events that can trigger an adjustment, the procedure for making a change, and who has the authority to decide. Place that authority in a single body answerable for the outcome, rather than splitting it across actors who can each block but do not commit. The capacity to use this authority should be built inside the public institution, since the judgement required to redesign a complex contract rests on an understanding of that contract and its counterparties that cannot be hired in at short notice.

None of this requires importing a foreign legal tradition. New Zealand offers a working example: its standard public-works contracts codify adjustment in advance, through defined events that extend time or recalibrate cost under set procedures.[7] The mechanism is written into contracts from the start, not derived from judicial discretion, which means that it can be adopted by any system.

The UK is currently facing the same underlying problems as Bogotá and Bucaramanga, but it is responding to them in a different way. In rail and buses, it is moving demand and fare risk away from private operators and back to the public sector. This is a legitimate response, but it does not remove the problem so much as relocate it. The same questions of capacity, authority and protection reappear inside the public structure, which must still redesign contracts, decide quickly and stand behind the officials who sign.[8]

Where the UK continues instead to transfer long-horizon risk to private contractors – in major projects such as HS2, and across the legacy of the Private Finance Initiative – the Colombian lessons apply directly. Rigidity engineered in the name of certainty, with no designed route to adapt, will end in the same binary choice between costly rescue and collapse.

The argument is not theoretical. Since these events, Colombia has rewritten its own law to require that, before a system can receive national co-financing, the money to operate it – not just to build it – is secured.[9] The examples detailed highlight that the conditions for adaptation must be built in from the outset, because by the time they are needed, it is too late to create them.

7 The regime of Extension Events and Compensation Events under New Zealand's standard construction and infrastructure contracts.

8 Through the Passenger Railway Services (Public Ownership) Act 2024, the Bus Services Act 2025, and the creation of Great British Railways, the UK is shifting from franchised private operation toward public control of demand and fare risk.

9 Law 310 of 1996, as amended by Law 2294 of 2023; its Article 172, together with the implementing resolution of the Ministry of Transport, requires evidence of secured operating funding as a condition of national co-financing – a direct legislative response to the operating-cost gap that this brief identifies.

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