



BREACH OF CONTRACT: KEY POINTS TO BE AWARE OF

Many business relationships work successfully for a number of years however, in some instances, issues can arise between the contracting parties. It may be that one party is not happy with the quality of goods or services being provided or payment deadlines are not being met.

This factsheet explains some of the key points that you should consider in that scenario and provides some practical guidance.



1. Check the contract

The first step is always to carefully review any contracts that the parties have entered into to understand the contractual obligations of each party. If the contract was made verbally, it is likely to be harder to identify and evidence the terms agreed.

In addition to the terms which were expressly agreed by the parties, in certain situations, the court can imply terms into a contract by virtue of legislation. For example, the requirement that services must be performed with reasonable care and skill.



2. Notice provisions

Some contracts include provisions which require a party to notify the other party when they consider that there has been a breach of the contractual obligations. We would recommend that you carefully check any notice requirements – it may be that the notice will only be valid if you send it by registered post to a specific address.



3. Opportunity to remedy

The contract may contain a term requiring you to give the other party a certain period of time to put things right. Even if the contract does not contain such a term, it may be appropriate to provide the other party with an opportunity to remedy the breach of contract anyway, as this can sometimes avoid the escalation of a dispute.

It is always worthwhile thinking outside the box when approaching breach of contract, particularly if you have a long established relationship with the other party that you are keen to preserve. It may be that the issue can be resolved by the other party agreeing to remedy the issue at their own cost and/ or provide you with a discount.



4. Think about your objectives

If the other party does not put things right when notified of the breach of contract, it is a good idea to seek legal advice on your options, before taking further action. Taking legal action may be one option but could be other, more appropriate and cost effective ways of resolving the dispute. Threatening to issue a claim against the other party may damage the business relationship and could impact on your reputation in the marketplace. Think about what you would consider to be a satisfactory outcome to the dispute.



5. Termination of the contract

It is important to be aware that not all breaches of contract will automatically give you the right to terminate the contract. The Court can treat different clauses in different ways and, of course, a lot depends on the exact wording of the terms of the contract.



6. Alternative dispute resolution clauses

Some contracts will include express provisions requiring the parties to engage in a form of alternative dispute resolution procedure (“ADR”) before taking legal action. Forms of ADR include arbitration, adjudication, mediation and negotiation. ADR is often a more cost effective way of resolving a dispute than court proceedings and is worth considering even if the contract does not oblige the parties to engage in ADR.



7. Keeping a record

In order to bring a successful claim for breach of contract, you will need to prove that (i) a breach has occurred (ii) the breach has caused you to suffer loss and (iii) the amount of the loss suffered.

It is therefore very important to keep a comprehensive record of what has happened, and retain all correspondence and documents (including emails and other electronic documents) relating to the dispute. You may need to rely on these documents if legal proceedings are commenced. You should also keep copies of any invoices evidencing additional costs for remedial work or replacement goods. The parties have a duty to preserve documents relating to the dispute.



If you need any assistance in respect of issues covered in our factsheet, please do get in contact with our Dispute Resolution Team. They can be contacted at:

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